

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1424

In The
UNITED STATES COURT OF APPEALS
For the Second Circuit

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

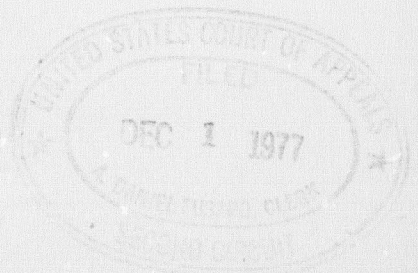
RAY JONES,

Defendant-Appellant

APPENDIX FOR APPELLANT

Appeal from a Judgment of the
United States District Court for
The Western District of New York

PETER L. COSTA, ESQ.
Attorney for Defendant-Appellant
RAY JONES
705 Brisbane Building
Buffalo, New York
Phone: (716) 853-4340



PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

VOIR DIER	1
Cross examination of Agricultural Agent William K. Shortall	25
Direct and cross examination of Sheriff's Deputy Joseph Petronella	28
Direct examination of Raymond Joseph Schmit Identification Officer, City of Buffalo Police Department	67
Direct examination of Robert Barton	72
Direct and cross examination of Russell Baker, Detective City of Buffalo Police Department	76
Direct examination of Michael Barton	83
Direct and cross examination of Defendant Ray Jones	86
Direct and cross examination of Ronnie Manns	138
Government's Summation	147
Instructions to Jury	167
Exceptions to Instructions to Jury	206
Government Exhibits Nos. 5 and 6, Transcripts of taped conversations - February 25th and 28th 1977	219



1

VOIR DIRE

1

1 Q Now, I told all of you generally at first and I
2 ask you particularly now whether you have any
3 inner trouble or reluctance to follow the concept
4 that even though Mr. Jones has been charged with
5 these crimes that nevertheless he is presumed to
6 be innocent and must be considered to be innocent
7 until the Government has proved its case against
8 him beyond a reasonable doubt until you have
9 listened to the attorneys, until you have listened
10 to my instructions on the law and have retired to
11 deliberate and had come to some decision, do you
12 have any trouble with that?

13 A No.

14 Q Or with the concept that there is no obligation
15 on the part of Mr. Jones to put in any evidence
16 in the case, the full burden in the case rests
17 with Mr. Wagner representing the Government, Mr.
18 Jones does not have to take the witness stand,
19 do you have any worry or concern with that?

20 A No.

21 Q If he doesn't take the witness stand are you going
22 to have any feeling that he must be hiding something,
23 that he must be guilty otherwise he would have taken
24 the stand?

25 A No.

1 A No, sir.

2 Q Have you been involved in any criminal prosecution
3 as a witness?

4 A No.

5 Q Do you have any relatives or close friends who are
6 in police work?

7 A No, I haven't.

8 Q Is there anything involved in the food stamp
9 business that leaves you prejudiced before you hear
10 anything?

11 A No.

12 Q Do you have any problem with what I have indicated
13 to you that it must be so, namely, that Mr. Jones
14 is innocent and must be presumed to be innocent
15 until the Government proves him guilty beyond a
16 reasonable doubt?

17 A Yes, sir.

18 Q You do have trouble?

19 A No, I won't have trouble.

20 Q You will follow it. All right. Yes is no and no is
21 yes. All right. And do you have any feeling that
22 Mr. Jones if he is innocent that he should take the
23 stand on his own behalf and that if he does not take
24 the stand that there is some inference of his guilt
25 that could be drawn therefrom?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A I don't see him too often because I don't live close
2 enough. I only see him once in two years.

3 Q You don't discuss his work or get involved in --

4 A I see his mother sometimes.

5 Q Does this leave you again with any predisposition
6 one way or the other of the case?

7 A No.

8 Q Would you be able to evaluate the testimony of people
9 who are in law enforcement work and decide on what
10 you see and hear whether that person is telling the
11 truth and put aside the fact that your nephew is in
12 police work?

13 A Right.

14 Q Is there anything involved in this food stamp context
15 that --

16 A No, I don't know anybody that got food stamps or had
17 anything to do with it.

18 Q You certainly would make Mr. Wagner prove his case, --

19 A Right.

20 Q -- the charges that are laid?

21 A Right.

22 Q Do you have any problem with the concept considering
23 Mr. Jones being innocent until he has been proved
24 guilty?

25 A No.

1 Q You probably had some experience with one or more
2 local Boards?

3 A Right.

4 Q And your husband is Sales Manager --

5 A Not Sales Manager.

6 Q -- at N. L. Kaplan Furrer?

7 A Salesman.

8 Q Salesman. All right. We will demote him. And you
9 have been a witness in a number of lawsuits which
10 involved Selective Service matters and Selective
11 Service records sometimes with a jury and sometimes
12 without a jury, I think you indicated that your
13 role in those cases was merely to bring the documents
14 and say what the documents are, is that right?

15 A That's true.

16 Q And have you been involved in any criminal prosecution
17 yourself or been a victim or witness?

18 A No.

19 Q Do you have any relatives or close friends who are in
20 police work?

21 A I have a brother and a nephew that are attorneys but
22 in Washington.

23 Q Washington, D.C.?

24 A That's right.

25 Q They work for the Government?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A Yes. Well, yes, I think -- One is in FAA, Federal
2 Aviation, and the boy is in contracts, government
3 contracts.

4 THE COURT: Can you hear all this, Mr. Costa?

5 MR. COSTA: I got a smattering of it, your
6 Honor.

7 THE COURT: If you can't, you may move up.

8 BY THE COURT:

9 A My brother is with the FAA and my nephew is Federal
10 contracts. They're attorneys.

11 MR. COSTA: I'm sorry, I didn't get the second
12 classification.

13 PJ 6: He takes care of --

14 MR. COSTA: You have got two brothers in
15 Federal service?

16 PJ 6: A brother and a nephew.

17 MR. COSTA: The nephew is with Federal
18 contracts and your brother is with FAA?

19 PJ 6: Right.

20 MR. COSTA: Both are attorneys?

21 PJ 6: Yes. My brother is retired.

22 MR. COSTA: Both are retired?

23 PJ 6: No. The boy isn't retired, he's
24 just starting out. My brother is retired.

25 MR. COSTA: Thank you very much.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 BY THE COURT:

2 Q Now, concerning this matter of food stamps, is there
3 anything as to that that leaves you bias or prejudiced,
4 Mrs. Kimball?

5 A No.

6 Q And do you have any trouble with going along with
7 the concepts of presumption of innocence and the
8 fact that the Government has to prove its case beyond
9 a reasonable doubt and Mr. Jones has no obligation
10 to put in any evidence and take the witness stand
11 himself?

12 A No, I don't.

13 Q You have no problems with that?

14 A No.

15 Q And, Mrs. Horowitz, you have not had any jury
16 experience except that --

17 A (PJ 7) One case which --

18 Q You came here and you were on one in front of me?

19 A Which finished May the 25th.

20 Q And you have a very good memory.

21 A Thank you.

22 Q And that was the case involving the bringing in of
23 the alien?

24 A Right.

25 Q And you heard my instructions and you deliberated and

1 means nothing more than being a vehicle for bringing
2 those charges into court, and in court you have a
3 trial jury such as we are now selecting, and that
4 trial jury with the person presumed innocent must
5 determine on the basis of what the State or here
6 the United States proves in the case and then the
7 State or the United States has the job of proving
8 that beyond a reasonable doubt. There is no question
9 in your mind that you are occupying a different role
10 at this time, is there, Mr. Bell?

11 A. No, sir.

12 Q. And do you have any problem with the concepts that
13 I have talked about?

14 A. No.

15 Q. Have you been involved in any criminal proceeding?

16 A. No.

17 Q. And do you have any relatives or friends who are
18 in police work?

19 A. No.

20 Q. Anything in connection with food stamps that bother
21 you one way or the other?

22 A. No, sir. Just when I was out of work this past
23 last blizzard but nothing else.

24 Q. Did you yourself lose time during the storm?

25 A. Yes.

1 THE COURT: You are a good lawyer, you know
2 how to ask questions.

3 MR. COSTA: Thank you, your Honor.

4 BY MR. COSTA:

5 Q You think it will affect your ability to be fair
6 and impartial?

7 A No, I could be very impartial but I would like to
8 tell you that I'm strongly against it.

9 Q Against --

10 A Getting it illegally or unfairly.

11 Q Fine. Do you think that that would affect your
12 ability here to make a final judgement as to whether
13 or not --

14 A I don't know if it would or not.

15 Q You have some doubt about it?

16 A I have.

17 Q We won't press it any further. Thank you. Thank
18 you for your candidness and your honesty.

19 Miss Horowitz, --

20 A (PJ 7) Yes.

21 Q -- you have heard some of the general questions I
22 have been asking about the media information about
23 this kind of accusation. Have you come to a point
24 in viewing this kind of circumstance so that you have
25 formed an opinion?

1 this case as to ascertain whether the crime charged
2 was in fact initiated by a law enforcement official
3 or someone acting for that law enforcement official
4 for personal profit and benefit. In other words,
5 will each and every one of you give consideration
6 to our defense in this consideration legally called
7 entrapment or government misconduct and that the
8 government approached us through a paid informant
9 and asked us, in effect, to buy the stamps. Will
10 you consider that, Mrs. Sobierajski?

11 A (PJ 1) I don't understand.

12 THE COURT:

Well, what I would tell the
13 jury, of course, once there is any
14 indication in the case that such
15 might be possible then I would tell
16 the jury that the Government had a
17 burden to prove that there was a
18 disposition on the part of Mr. Jones
19 to engage in this activity and that
20 he did not get pushed into it or
21 enticed into it solely because -
22 solely or mainly because of the Govern-
23 ment activities, that will be part of
24 the Government's proof. I will tell
25 you that if you are not satisfied that

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Q Have you ever been involved in any criminal prosecu-
2 tion at all as a witness or a victim?

3 A No, I haven't.

4 Q And do you have any close friends or relatives
5 who are in police work?

6 A No, I haven't.

7 Q And is there anything about this particular problem
8 which involves food stamps that gives you any feeling
9 that you are prejudging the case, have any attitudes
10 that we ought to know about?

11 A No, I have no attitudes.

12 Q Now, all six of you, I've talked generally, of course,
13 about the presumption of innocence, I talked about
14 the fact that the Government has complete and total
15 burden of proving its case on the fact that Mr. Jones
16 is presumed innocent until the Government has proved
17 the case and until you, the jury, have decided that
18 he may be guilty, and until that time he is presumed
19 innocent and, of course, your decision would be either
20 way, you are either going to decide that he is guilty
21 or not guilty, but do you have any problem with the
22 consideration that here and now and inspite of the
23 charges against him that he is an innocent man until
24 Mr. Wagner proves his case against him, does any one
25 of you have any problem with that concept?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A (PJs1, 2, 3, 5, 6, 10) No.

2 Q Also, Mr. Jones has no obligation to put in any
3 evidence, he doesn't have any obligation to take the
4 witness stand in his own behalf, Mr. Costa has
5 indicated that he probably will take the witness
6 stand but if he does not that you are not to draw
7 any inference from that of his being guilty of
8 thinking he has something to hide because he doesn't
9 take the witness stand, are you troubled with that
10 concept at all?

11 I have also indicated and Mr. Costa has indicated
12 there might be a question of whether Mr. Jones was
13 entrapped in this, whether he not having any prior
14 disposition or willingness to engage in something
15 illegal along these lines was nevertheless coerced
16 and urged into it by a Government Agent, and I would
17 tell you that the Government would have the burden
18 of showing that there was not any such entrapment
19 and if the Government fails to do that, if the
20 Government fails to satisfy you beyond a reasonable
21 doubt that there was not entrapment would you have
22 any reluctance in saying, "Mr. Jones, you're innocent,
23 you're not guilty."?

24 No problem in that regard.

25 THE COURT: All right, Mr. Wagner.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A No, sir. No, your Honor.

2 Q And do you have any relatives or close friends in
3 police work?

4 A No, I do not.

5 Q Now, you heard my questioning of other jurors about
6 whether or not they have any questions or any
7 reluctance in accepting this presumption of innocence
8 that Mr. Jones enjoys at this point and will enjoy
9 all the way through the trial until the Government
10 has proved its case and until the jury might
11 unanimously decide that he was guilty, do you have
12 any problem with that?

13 A No, I don't.

14 Q Do you have any problem with the fact that only
15 the Government has the burden of proof in this case
16 and it has it as to every element of the case?

17 A Right.

18 Q And Mr. Jones does not have to put in any evidence,
19 he does not have to take the witness stand in his
20 own behalf?

21 A I understand that.

22 Q Do you have any problem with any of that?

23 A No, I do not.

24 Q And if, as I think I will, I will inform you that
25 the Government also has the burden of proving that

1 there was no entrapment, that this crime did not come
2 about because Mr. Jones was coerced into it or urged
3 into it by the Government, if I tell you that the
4 Government has a certain burden of proving that
5 mainly beyond a reasonable doubt proving either there
6 wasn't any such urging or that Mr. Jones had a pre-
7 dilection, a predisposition to engage in it, would
8 you accept that and follow that?

9 A I would.

10 Q And if you decided that the Government fell short in
11 its proof and short of this beyond a reasonable doubt
12 as to any element, would you have any hesitancy in
13 saying that Mr. Jones is not guilty?

14 A No.

15 Q Is there anything in connection with the food stamps
16 or the Food Stamp Program that leaves you biased or
17 prejudiced or concerned in any way?

18 A No, there isn't.

19 THE COURT: Mr. Wagner.

20 BY MR. WAGNER:

21 Q Mr. Borne, sir, did you hear the names I read off
22 earlier?

23 A (PJ 3) Yes, I did.

24 Q Anybody familiar to you?

25 A No, no, sir.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A No.

2 Q And I guess that's the aspect of that. Have you been
3 involved in any criminal prosecution?

4 A No, sir.

5 Q Is there anything about the food stamp business that
6 has involved you or leaves you with some strong
7 feeling one way or the other?

8 A No.

9 Q And, Mr. Tadak, what do you do, sir?

10 A (PJ 6) I work for the U.S. Post Office.

11 Q And what station do you work at?

12 A I work at the Main Post Office.

13 Q How long have you been with them?

14 A Seven years.

15 Q What do you do there?

16 A I work in the building maintenance.

17 Q In what?

18 A Building maintenance.

19 Q I forgot to ask you, Mr. Varecka, whether Mrs.
20 Varecka is employed outside the home?

21 A (PJ 3) At present, no.

22 Q Pardon?

23 A At the present time, no, your Honor.

24 Q How long has it been since she worked?

25 A Five months.

1 Q And what had she done?

2 A She worked for the same company as I.

3 Q And, Mr. Tadak, is your wife employed outside the
4 home?

5 A (PJ 6) No, she isn't.

6 Q Have you been on jury service, sir?

7 A I've been with Erie County.

8 Q How long ago?

9 A Oh, about seven years.

10 Q And more than one case?

11 A I wasn't on no cases, your Honor.

12 Q You just sat in the bull pen?

13 A Yes.

14 Q You have not really been on a jury at all then, right?

15 A No, your Honor.

16 Q And do you have any relatives or close friends who
17 are in police work?

18 A Yes, I do.

19 Q And who and what do they do?

20 A I have a cousin that's a State Trooper and a friend
21 whose father is in the Sheriffs Department.

22 Q Your State Trooper cousin, is he stationed here in
23 this area?

24 A He's stationed at Orchard Park Barracks.

25 Q Are you very close to him that you see him socially?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A I see him once in a while.

2 Q Do you discuss his work with him at all?

3 A No, we don't.

4 Q Does that have any influence on you so far as your
5 predisposition in a case or tending to believe a
6 law enforcement witness more than if you did not
7 have this relationship?

8 A No.

9 Q What about the friend, what does he do?

10 A His father is in the Sheriffs Department.

11 Q What is his name?

12 A Eddie Miller.

13 Q This is the name of the fellow who is in the Sheriffs
14 Department?

15 A Yes, that's his father.

16 Q Do you know his position there?

17 A No, I don't.

18 Q Now, are you at all close to the father?

19 A Well, I'm close to his son but most of the time his
20 father is there when I'm there.

21 Q Is this a neighbor or some social --

22 A A good friend.

23 Q And arising out of what?

24 A Well, I help his son out in his business.

25 Q So because of that you became friendly with the father

1 and with the son?

2 A Yes.

3 Q Now, there will be one or more witnesses in the case
4 who are members of the Erie County Sheriffs Department,
5 would the fact that you have this friendship with a
6 father, son, the father which is in the Erie County
7 Sheriffs Department, is that going to have you leaning
8 in their direction, in the Government's direction in
9 this case?

10 A No, your Honor.

11 Q If Mr. Wagner falls short on any one of these elements
12 that I have talked about and does not prove one or
13 more of them beyond a reasonable doubt including this
14 aspect of entrapment would you have any reluctance
15 of saying Mr. Jones is not guilty?

16 A No, your Honor.

17 Q And would you be at all embarrassed in talking with
18 your friend and your friend's father and have to
19 explain to them how you came to be on a jury that
20 acquitted somebody?

21 A No.

22 Q Particularly when the Sheriffs' people might be involved
23 in the prosecution?

24 A No.

25 Q All right. Would it tend to have you believe the

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 witness more than if you did not have that relation-
2 ship?

3 A. No, your Honor.

4 Q. Is there anything in the Food Stamp Program that -
5 any particular experience that gives you any bias
6 or prejudice?

7 A. Well, during the snow storm I was a little disgusted
8 because I didn't receive it, that I couldn't receive
9 the food stamps but everybody else received them.

10 Q. You thought it was sort of an unwarranted give away
11 but can you accept the fact that this was legally
12 done and it was a Government program and you don't
13 agree with the program but nevertheless it was legal.

14 A. Right.

15 Q. Now, what Mr. Jones is charged with here is having
16 illegally acquired some stamps, would you be able to
17 put aside your thinking on the general program and
18 decide from the evidence whether or not Mr. Jones
19 is guilty?

20 A. I think so.

21 THE COURT: All right, Mr. Wagner.

22 BY MR. WAGNER:

23 Q. Gentlemen, Mr. Varecka, did you get food stamps as
24 a result of the blizzard?

25 A. (PJ 3) Yes.

1 and a large number of people were do you have some
2 bad feelings about the program?

3 A Well, yes, when I saw a doctor or a lawyer getting
4 them I was wondering how come I couldn't get them.

5 Q Do you think that that experience which gave rise
6 to that feeling you have now, would make you feel
7 uncomfortable being on a jury where a man is charged
8 with a crime?

9 A No.

10 Q Why do you say that, sir?

11 A I feel funny about the food stamps. Everybody can
12 afford to get them like I know a few people that was
13 getting them and they could buy the food, and they
14 were receiving the food stamps.

15 Q Anything else that you want to say to us about that?

16 A No.

17 Q Do you think that if instructed by Judge Elfvin about
18 the elements of this particular offense that you could
19 follow his instructions fairly and honestly?

20 A I think so.

21 Q Do you think you could take the general feeling you
22 had about the Food Stamp Program and put them aside
23 and listen to this case alone?

24 A Yes.

25 Q Do you think, sir, if you were influenced at all you

1 would be tending to feel in the Government's favor
2 or the Defendant's favor, either way?

3 A It depends.

4 Q I'm sorry?

5 A It depends.

6 Q Why would that be?

7 A I don't know. It depends. I got that feeling with
8 the food stamps.

9 Q Would you tend, sir, to think that if a fellow can
10 get them he should get them?

11 A A person that's eligible should get them, the ones
12 that isn't shouldn't get them.

13 Q Okay, I have nothing else for you. Thank you very
14 much.

15 THE COURT: Mr. Costa.

16
17 BY MR. COSTA:

18 Q Mr. Varecka, have either you or any member of your
19 family ever made a claim against anybody or anybody
20 make a claim against you?

21 A (PJ 3) No.

22 Q Have you ever engaged an attorney to represent your
23 legal interest?

24 A No.

25 Q Do you own your own home?

1 Q There's got to be something wrong, he's here in the
2 court room, he's accused of something and therefore
3 he did something wrong, do you agree with that that
4 he did something wrong by virtue of the fact that
5 he's accused, do you think that's right?

6 A No.

7 Q Pardon me, I didn't hear your answer, sir.

8 A No.

9 Q He is still presumed innocent, you accept that?

10 A I don't know until I hear the case.

11 Q Do you think that Mr. Jones has got to prove to you
12 that he's innocent?

13 A I think so.

14 Q You think he's got to prove that to you?

15 A Yes.

16 Q Even though his Honor said to you that he is presumed
17 to be innocent?

18 A Yes.

19 Q Do you understand my question? Maybe I'm a little
20 confused.

21 THE COURT: The point is, Mr. Tadak, I would
22 instruct you that this Defendant Mr.
23 Jones is presumed innocent, that even
24 though he has been charged he sits
25 here as an innocent man and will

- 1 well, and, you know, the Buffalo Special Police.
- 2 Q You did work for the Buffalo Special Police?
- 3 A Yes. Well, I was working the desk part time.
- 4 Q On the desk for the Buffalo Special Police?
- 5 A No. I worked for a detective agency as the Buffalo
- 6 Special Police you know, gin mills, dances, bingo.
- 7 Q You worked as a law enforcement person?
- 8 A Right.
- 9 Q How long did you do that?
- 10 A I did it for thirteen years.
- 11 Q Ever have any desire to go into professional police
- 12 work?
- 13 A I tried to.
- 14 Q You weren't eligible because of certain --
- 15 A On account of my eyes.
- 16 Q Do you like being a police officer?
- 17 A Yes, sir.
- 18 Q You enjoyed it?
- 19 A Yes, sir.
- 20 Q Now, there's going to be police officers who are
- 21 going to be in and out of uniform testifying in this
- 22 case or connected with the law process. Do you think
- 23 that because of your admiration of this kind of work
- 24 or your desire to be in this kind of work that you
- 25 might have a strong tendency to want to accept what

1 evidence in this case and listening to what I tell
2 you about the case and what the law is?

3 A. No.

4 Q And then coming to a decision in this case regardless
5 of what the newspaper said?

6 A. No.

7 Q You have no trouble?

8 A. No.

9 Q All right. And as I have discussed I will tell the
10 jury what the elements of the crime are, what Mr.
11 Wagner must prove, and one of those will be that
12 there was no entrapment and Mr. Jones was not led
13 into or urged into this on the part of the Government
14 or that he had a predisposition or that he did have
15 a predisposition to commit this particular crime.
16 Now, if Mr. Wagner proves that there was this predisposi-
17 tion or that there was no urging that he proves that
18 beyond a reasonable doubt and he proves all of the
19 other elements would you have any reluctance to find
20 Mr. Jones guilty?

21 A Well, I only thought a person is innocent until he's
22 proven guilty.

23 Q Right. And if Mr. Wagner proves his case would you
24 have any reluctance to say that he had done so and
25 that Mr. Jones is guilty?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Cross examination of Agricultural Agent
William K. Shortall

1 the individuals who had made these supposed
2 illegal activities or were you supposed to
3 get involved in other aspects of the activities?

4 A. I'm not so sure I understand your question.

5 Q. I'll rephrase it. It is a little confusing,
6 I'm sure. Were you charged with the responsibility
7 of ascertaining those individuals that had
8 illegally obtained them or dealt with them or
9 were you also to seek other sources where these
10 individuals possibly were buying them or not
11 buying them, exactly what was your responsibility
12 in that area?

13 A. My responsibility was to gather evidence if
14 there were indications of such and to obtain
15 any evidence that would be available and to
16 assist the authorities who were investigating.

17 Q. Those who had acquired them?

18 A. You mean the recipients of the food stamps in
19 emergency issuance?

20 Q. There were reports of supposed illegal - we'll
21 categorize it as illegal dealings in food
22 stamps?

23 A. Yes, sir.

24 Q. Now, there were various aspects, if I understand
25 the information at that time there were people who

1 A. As I recall I did not put that in the report.

2 Q. Any reason why you omitted that part of the
3 report?

4 A. No, sir.

5 Q. You just didn't put it in there?

6 A. I think that I put in that it was information
7 received from confidential informants.

8 Q. Well, do you recall if you made any mention in
9 your report that he was allegedly, based on the
10 information from the confidential informant,
11 purchasing food stamps illegally prior to the
12 two occasions in which you were, in a sense,
13 a participant in some government activity?

14 A. I didn't put that in.

15 Q. Did you have any specific information which was
16 related to either by Detective Petronella,
17 Costantino, Costanza or the informant about these
18 alleged prior specific dealings?

19 A. No specific information other than that their
20 information was that this was an individual
21 who was reputed to be dealing in food stamps.

22 Q. And you didn't put that in the report either?

23 A. No, sir, I don't think so.

24 Q. Now did you receive any instructions from Mr.
25 Lonergan as to the methodology, the procedure that

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Direct and cross examination of Sheriff's
Deputy Joseph Petronella.

1 DIRECT EXAMINATION BY MR. PETRONELLA:

2 Q. Mr. Petronella, sir, I would like you to tell
3 the members of the Jury what your occupation is?

4 A. I'm with the Erie County Sheriff's Department
5 assigned to narcotics.

6 Q. Can you describe for the Jury what your particular
7 line of work involves?

8 A. I work undercover.

9 Q. And, approximately, sir how long have you been
10 with the Sheriff's Department?

11 A. Almost six years.

12 Q. And have you been doing undercover work most
13 of that time, sir?

14 A. Yes, I have.

15 Q. Now, Mr. Petronella, sir, in the course of your
16 official capacity with the Sheriff's Office
17 did you become involved with an investigation
18 in the Buffalo area in the spring or late winter
19 of 1977 regarding possible violations of the
20 Federal Food Stamp laws?

21 A. Yes.

22 Q. And in the course of that particular investigation
23 sir, did you use informants with you?

24 A. Yes.

25 Q. I would like you to explain to the jury what you

1 mean when you say an informant?

2 A. An informant is a person who helps me in introducing
3 me to people so that I can make a purchase of
4 narcotics or in an undercover capacity pertaining
5 to investigations.

6 Q. These people are not actually employees of the
7 Sheriff's Department?

8 A. No.

9 Q. Can you tell the members of the Jury, please,
10 if a Mr. James Riley was involved with you in
11 the role of an informant?

12 A. Yes, he was.

13 Q. And I would like you to explain also to them
14 what Mr. Riley's position was in this investigation
15 and what arrangements you had with him in return
16 for his cooperation?

17 A. Mr. Riley introduced me to people that were buying
18 food stamps illegally.

19 Q. Did he actually work with you in the field?

20 A. Yes.

21 Q. Did you have a particular arrangement with Mr.
22 Riley at any time about what you would do in
23 return for him for his cooperation?

24 A. That he would be compensated financially, yes.

25 Q. And do you know if Mr. Riley was ultimately

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

31

1 BY MR. WAGNER:

2 A. Mr. Riley and I and another individual pulled
3 up in front of Ray Jones Collision.

4 Q. Were you in a car?

5 A. Yes.

6 Q. Do you recall whose car that was?

7 A. It was a rented car rented through the
8 U. S. Department of Agriculture.

9 Q. Do you know what kind of a car it was?

10 A. It was a red Monte Carlo.

11 Q. And who was with you in that car, as best you
12 recall?

13 A. Myself, Mr. Riley and another informant.

14 Q. Were there any other agents from the Department
15 of Agriculture there at that time?

16 A. Not in my vehicle. They were part of the
17 surveillance team.

18 Q. The other person with you apart from you and
19 Mr. Riley, did he have any specific dealings
20 with this particular defendant?

21 A. No.

22 Q. Now, when you pulled up, sir, in that area
23 I would like you to tell the jury what happened?

24 A. Mr. Riley went into the location, he stood there
25 approximately maybe a minute or so, he walked

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 out and as he walked out, he raised his arm
2 and signalled me to go inside, I left the under-
3 cover vehicle and proceeded into the collision
4 shop.

5 Q. I'm going to show you, sir, what's been marked
6 as Government Exhibit 1 for identification,
7 I would like you to look at that, sir, and tell
8 us if you know what that is?

9 A. Yes. This is a picture of the Ray Jones Collision
10 Service, Incorporated and myself entering the
11 collision shop.

12 Q. So the record is clear, the individual in the
13 picture is you?

14 A. Yes.

15 Q. And what are you wearing in that picture, sir?

16 A. A long fur rabbit coat.

17 Q. Now, Mr. Petronella, as best you can, tell us
18 sir, does that picture depict the scene of
19 Ray Jones Collision Service on or about the
20 time of this transaction we are discussing?

21 A. Yes.

22 Q. I will show you what's been marked as Government
23 Exhibit 2 for Identification, again I would like
24 you to tell the Jury what that is, if you know?

25 A. It's a picture of me in front of Ray Jones Collision

1 Service, Incorporated.

2 Q. And again, sir, does that picture, as best you
3 can tell, at this time, accurately depict the
4 scene on or about the transaction we're speaking
5 about?

6 A. Yes.

7 Q. Now, I would like you to tell us, sir, approximately
8 how long, as best you can tell that Mr. Riley
9 was in the shop?

10 A. Maybe approximately eight minutes or so.

11 Q. Could you see where Mr. Riley was?

12 A. He walked into the door, yes, he was standing
13 in the doorway of the collision shop.

14 Q. And you were waiting in the car, is that right,
15 sir?

16 A. Yes.

17 Q. Were there other agents in the vicinity if
18 you know?

19 A. Yes.

20 Q. And where were they, if you know?

21 A. I have no idea.

22 Q. Do you know what their role was being in the
23 area?

24 A. Yes.

25 Q. And what was that?

1 A. One vehicle was to take pictures of the transaction
2 and the other vehicle monitored the audio
3 devices.

4 Q. Now, speaking of audio devices, were you wearing
5 or did you have on your possession any type of
6 electronic device at that time?

7 A. Yes.

8 Q. And what was that, please?

9 A. On the first transaction with Mr. Jones, I had
10 a NAGRA on.

11 Q. And can you describe what that looked like,
12 what that was like?

13 A. Yes. It's a little metal box approximately
14 five and a half to six inches long, approximately
15 three and a half to four inches wide, and
16 approximately one, one and a half inches thick.

17 Q. When had you been given that particular device
18 with respect to this transaction?

19 A. It was given to me by a U. S. Department of
20 Agriculture Agent, Mr. Jones, and it was placed
21 on me earlier in the day.

22 Q. Would you please describe for the Jury how you
23 wore the device?

24 A. I -- Can I stand up?

25 Q. If it would help to describe it, please.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A. I got the box and I placed it on my side under-
2 neath my pants, and there is a long wire with
3 a microphone that came underneath my shirt,
4 it hooked onto my undershirt, and I had a shirt
5 over that and a heavy sweater so that you couldn't
6 pick up the mike.

7 Q. Did you have the device on, sir, when you
8 encountered Mr. Jones that day?

9 A. Yes.

10 Q. Now, with respect to that particular device,
11 sir, is there a way of turning it on and off?

12 A. Yes.

13 Q. And how is that done?

14 A. You would have to depress a lever, a hammer,
15 and press it down, I believe turn it - push it
16 toward the right and that would turn the machine
17 on.

18 Q. And do you know how to turn the machine off?

19 A. Yes.

20 Q. And how is that done?

21 A. By pressing down on it and pulling it toward
22 the left and that would shut the machine off.

23 Q. Now had you had any experience prior to the 25th,
24 prior to this particular transaction on the 25th,
25 turning that device on and off?

1 A. Yes.

2 Q. Were you familiar with its operation at that time?

3 A. Yes.

4 Q. Now when Mr. Riley came out of Mr. Jones'
5 Collision Service office, did you say he
6 signalled you?

7 A. Yes.

8 Q. Can you describe or show us what he did?

9 A. He motioned with his hand for me to go in
10 as he was walking out of the door.

11 Q. And what did you do?

12 A. I left the undercover vehicle and proceeded
13 inside the location.

14 Q. Now, do you know sir, if the tape recorder
15 had been turned on at that point?

16 A. Yes.

17 Q. How did you turn it on?

18 A. By depressing the button and pushing it toward
19 the right, I believe.

20 Q. I would like you to describe for the jury, sir,
21 what happened as you went out to the collision
22 shop?

23 A. I pre-empted the tape.

24 Q. Would you explain to them what you mean by that,
25 sir?

1 recollection whether or not the conversation
2 which was taped has any gaps or any absences
3 from what occurred in real life on that day?

4 A. No.

5 THE COURT: No, you can't tell.

6 THE WITNESS: I mean it's exactly what happened
7 that day.

8 BY MR. WAGNER:

9 Q. There is nothing missing?

10 A. No.

11 MR. WAGNER: Your Honor, I would like to and I
12 would feel the best evidence would be to
13 play the tape, but I realize we are
14 approaching the noon hour. Perhaps I
15 could discuss with Mr. Petronella a few
16 matters to take up our time. The electronics
17 man does need a few minutes to set up his
18 equipment.

19 THE COURT: Go ahead.

20 BY MR. WAGNER:

21 Q. Mr. Petronella, we will come back to the conver-
22 sation you had with Mr. Jones. Tell us briefly
23 in your own words what happened at that time?

24 A. I had a conversation with Mr. Jones pertaining
25 to a thousand dollars worth of food stamps, Mr. Jones

1 stated to me that he could not handle that
2 many, a thousand dollars worth. The price
3 of the food stamps was discussed between me
4 and Mr. Jones, we agreed upon the figure of
5 five hundred dollars worth of food stamps,
6 at a cost of a hundred and fifty dollars.
7 I counted out the food stamps and handed the
8 food stamps to Mr. Jones and Mr. Jones gave me
9 a hundred and fifty dollars in U. S. currency.

10 Q. Mr. Petronella, the food stamps that you gave
11 Mr. Jones, where did you get them from?

12 A. From the U. S. Department of Agriculture.

13 Q. And that was from whom specifically?

14 A. Mr. Shortall.

15 Q. That's the gentleman who was in here earlier
16 this morning testifying?

17 A. Yes.

18 Q. And the money you got from Mr. Jones, what did
19 you do with that, sir?

20 A. That was turned over to Sergeant Costantino
21 in the presence of Mr. Shortall.

22 Q. Do you know where that money has been kept?

23 A. In the vault at the Narcotics office.

24 Q. I show you, sir, what has been marked as Government
25 Exhibit 3 for identification and I will ask you

1 location.

2 Q. Did you make any reference on the tape about the
3 informant Mr. Riley?

4 A. No.

5 Q. How long were you inside?

6 A. Approximately three to five minutes, I believe,
7 for the entire taped transaction.

8 Q. Well, there's a difference -- Let's understand
9 one another. I understand the word exactly
10 to mean precise without any area for doubt and
11 with precision, is that what you understand the
12 word to mean?

13 A. Yes.

14 Q. Now when you say you were in there for three
15 to five minutes, that's your estimate of the
16 exact time that you were there?

17 A. On the first occasion, yes.

18 Q. Now, when you entered the place did you go into
19 the office or into the work area?

20 A. Into the office to the right of the door.

21 Q. And were there other people present?

22 A. No, not to my knowledge.

23 Q. No one else present?

24 A. No.

25 Q. And Mr. Riley had left?

1 A. Yes.

2 Q. Did you make any recording or was there any way
3 of monitoring the conversation that was had
4 between Mr. Riley and Mr. Jones?

5 A. No.

6 THE COURT: If I remember you said you kept
7 Riley under observation, you could see him
8 all the time?

9 THE WITNESS: Yes.

10 BY MR. COSTA:

11 Q. Could you overhear, were you in a position to
12 overhear the conversation between Mr. Jones and
13 Mr. Riley?

14 A. No.

15 Q. Now, after the initial taping when was the next
16 time that you listened to the tape, and date
17 in point of view of time?

18 A. I listened to the tape the day that I presented
19 the case to the Grand Jury, the Federal Grand
20 Jury.

21 THE COURT: Is that the first time you listened to
22 them?

23 THE WITNESS: Yes.

24 BY MR. COSTA:

25 Q. Between that time and that date which was, I think

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

(A copy of Government Exhibit 5 handed
to each juror.)

THE COURT: Don't pay much attention to the document
you have in your hand at this point Ladies
and Gentlemen, don't even read it at this
juncture. I am going to tell you what to do
with it. This as has been testified is
said to be a true copy of what is reflected
on the tape you are going to hear. It is
the identification of voices is said to be
true, and what it indicates is one individual
and Mr. Petronella has indicated that that
is the individual whose voice you are going
to hear at that point and the same as with
the other individual. Now you are going
to hear the tape and I want you to concentrate
on what is on the tape itself. Don't try
to read along from the transcript. Just
sort of refer back and forth to the transcript
as you need to, but basically if you are
watching and reading the transcript, you
are not going to be concentrating on what
you are listening to on the tape, you have
to concentrate on what is on that tape so

1 just use the transcript as sort of a guide
2 and a point to point information, a program
3 of events, so-called, and concentrate on
4 what you are hearing on the tape.

5 MR. GINSBERG: We are ready, your Honor.

6 THE COURT: Wait until everybody gets set up.

7 MR. COSTA: Aren't we going to have Mr. Ginsberg
8 testify that he has done something to the
9 tapes?

10 THE COURT: He has not done anything to the tapes,
11 I don't think. Would you like to ask him
12 some questions?

13 MR. COSTA: Well, I think I would like to ask him
14 some questions for the jury's edification.

15 THE COURT: Well, there has been no showing of
16 anything done with the tapes.

17 MR. COSTA: Well, I understand that, your Honor,
18 but I think I want to have the jury understand
19 what Mr. Ginsberg has done, in a sense,
20 for their receiving the information that
21 they are going to hear over the tapes.

22 MR. WAGNER: I have no objection to that, your
23 Honor, if you would like to put him on the
24 stand.

25 THE COURT: No. Mr. Ginsberg will be available if

1 you want to put him on the stand.

2 MR. COSTA: Well, your Honor, just for the record,
3 I think we ought to have it clear that
4 Mr. Ginsberg had to utilize his equipment
5 to eliminate certain kinds of background --

6 THE COURT: Mr. Ginsberg, and this goes back and
7 there is no problem in relating this to the
8 Jury, as I say, Mr. Ginsberg is here, he
9 can testify but what Mr. Ginsberg has done
10 and you can quarrel with me if I am wrong,
11 Mr. Costa, is not to do anything with the
12 tapes themselves. Everything that was on the
13 tape as it was originally recorded is there,
14 and Mr. Ginsberg is playing this through
15 some sophisticated equipment which has the
16 ability to filter out certain background
17 and interfering noises and so that what is
18 coming through is something that is more
19 intelligible. He is here and we can put
20 him on the stand and we will in due course.
21 But still he has added nothing to the tape.
22 What the jury will hear has been on the
23 tape all the time, is on the tape now.
24 Now, do you contend that there is more than
25 that to it? If you do we can go into it.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 and entered the undercover vehicle.

2 Q. And that particular day, was that the extent of
3 your involvement with Mr. Ray Jones?

4 A. Yes.

5 Q. Except for turning the money over and the tapes
6 as you testified to earlier, is that right, sir?

7 A. Correct.

8 Q. Did you have any further conversations with Mr.
9 Jones after that time, sir?

10 A. Yes, I did.

11 Q. When was the next time that you had a conversation
12 with Mr. Jones and describe to the Jury what
13 that was, please?

14 A. I talked to Mr. Jones early afternoon of the
15 28th of February, 1977.

16 Q. Did you talk to Mr. Jones personally or not?

17 A. Yes.

18 Q. Did you talk with him visually, personally?

19 A. No. Over the telephone.

20 Q. Did you call him or did he call you?

21 A. I called Mr. Jones.

22 Q. Did you get a voice on the other end of the phone?

23 A. Yes.

24 Q. Did you recognize the voice?

25 A. Yes.

1 Q. And whose voice was it, sir?

2 A. That of Mr. Jones.

3 Q. I would you to tell the jury as best you can
4 recall, sir, what you said to Mr. Jones at that
5 time and what he said to you?

6 A. I told Mr. Jones, I said I was the person that
7 he seen a couple days ago pertaining to those
8 things, he stated, yes, if I had any more, I
9 said, I had a thou meaning a thousand dollars
10 worth, he stated that he couldn't handle that
11 many, but that he would take two hundred dollars
12 worth. I asked him how much he was going to
13 give me, he said sixty five dollars,, I told him
14 that I would see him some time that afternoon
15 after four P.M.

16 Q. And did you have any further conversations with
17 him that you can recall at that particular time?

18 A. No.

19 Q. You terminated your conversation with Mr. Jones?

20 A. Yes.

21 Q. Did there ever come a time, sir, that same day
22 that you actually went out and saw Mr. Jones?

23 A. Yes.

24 Q. Approximately what time was that, sir?

25 A. Approximately four-ten, four-twelve P.M. on that day.

Edna J. Paczynski

OFFICIAL REPORTER, U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- 1 Q. How did you get to Mr. Jones at that time?
- 2 A. I drove the undercover vehicle, the rented Monte
3 Carlo, myself to Mr. Jones' place of business.
- 4 Q. And that was the same place you had been at
5 earlier, sir?
- 6 A. Yes, sir.
- 7 Q. Showing you Exhibit land 2, that's the scene again,
8 sir, as best you recall?
- 9 A. Yes, it is.
- 10 Q. In fact those photographs, sir, were taken on
11 the 28th?
- 12 A. Yes, they were.
- 13 Q. And did the scene change between the 25th and
14 the 28th, sir, any?
- 15 A. No, it did not.
- 16 Q. In any way?
- 17 A. No.
- 18 Q. Who was with you, Mr. Petronella, when you went
19 back on the 28th?
- 20 A. I was alone at this time in the undercover vehicle
21 and there was a surveillance team and a photographic
22 team and two surveillance vehicles behind me
23 someplace.
- 24 Q. You don't know exactly where they were, do you sir?
- 25 A. No, sir.

1 Q. Was there anybody else in your car with you?

2 A. No.

3 Q. Now, at that time, did you have any food stamps
4 with you?

5 A. Yes.

6 Q. And approximately how many food stamps did you
7 have?

8 A. Mr. Shortall had given me two hundred dollars
9 worth of food stamps.

10 Q. And when had Mr. Shortall given you those sir?

11 A. Prior to going into Mr. Jones' place of business.

12 Q. Did you have anything else with you, sir, with
13 respect to any type of electronic equipment?

14 A. Yes. I was wearing an AIDE monitoring device
15 and recording device.

16 Q. Can you explain to the jury what that is, please?

17 A. Yes. It's a small little box like the size of
18 a pack of cigarettes. It is worn underneath
19 your underwear. It has a long wire with a
20 micorphone on the end of it. The wire was
21 brought under myundershirt, taped onto my
22 undershirt, and I had a shirt and sweater over it,
23 plus a fur coat over that.

24 Q. Is there a way of turning that particular device
25 on and off, sir?

- 1 A. Yes.
- 2 Q. At your end?
- 3 A. Yes.
- 4 Q. And how is that done, please?
- 5 A. There is an on and off switch.
- 6 Q. Are you familiar with the operation of that
- 7 particular device?
- 8 A. Yes.
- 9 Q. You have worn it before?
- 10 A. Yes.
- 11 Q. You have used it before?
- 12 A. Yes.
- 13 Q. On that particular day, sir, did you switch it
- 14 on before you went into see Mr. Jones?
- 15 A. Yes, I did.
- 16 Q. And how did you do that?
- 17 A. By turning the switch to the on position.
- 18 Q. Now, I would like you to describe to the jury
- 19 what happened after that, sir, after turning
- 20 the device on?
- 21 A. I entered the collision shop and I had a conversation
- 22 with Mr. Jones.
- 23 Q. Would you describe generally what that conversation
- 24 related to?
- 25 A. I originally had tried to get Mr. Jones to come

1 outside so the surveillance team could get a
2 photograph of Mr. Jones. Mr. Jones did not
3 want to come outside. He instructed me to come
4 inside. I went inside and told him that I had
5 the two hundred dollars worth of food stamps
6 that he had wanted on an earlier conversation.
7 Mr. Jones stated to me that he wanted the
8 thousand dollars worth at that time. I stated,
9 "I brought what you asked for, only two hundred
10 dollars worth," he asked me if I could get the
11 other eight hundred dollars worth and bring
12 them back to him, that he would wait for me,
13 and I told him that I would try. I gave Mr. Jones
14 two hundred dollars worth of food stamps, Mr.
15 Jones gave me sixty-five dollars in United
16 States currency.

17 Q. Now, Mr. Petronella, before going in there
18 the food stamps had been set aside for the
19 purpose of that transaction?

20 A. Yes.

21 Q. Was any type of recording made of the stamps
22 sir, that you know of?

23 A. Yes. A photograph on the copy machine was made
24 of the books of the four books of stamps.

25 Q. I'll show you, sir, what has been marked Government

1 A. That one, no I did not.

2 Q. As best as you can recall, Mr. Petronella,
3 the tape that you heard played, did that reflect
4 accurately the content of the conversation you
5 had with Mr. Jones that day?

6 A. Yee.

7 Q. Can you tell us, sir, from your recollection
8 whether or not the tape had any gaps or absences
9 from what was said in real life?

10 A. No. Just an unintelligible word or the counting
11 of money or books where there was a gap in the
12 conversation.

13 Q. Could you tell us, sir, from listening to the
14 tape whether or not the device had been turned
15 off and turned back on at any particular point.

16 MR. COSTA: I object to that, your Honor.

17 THE COURT: Why?

18 MR. COSTA: He's not qualified to make that kind
19 of a judgment whether the tape had been turned
20 on or off.

21 THE COURT: Are you qualified, would you know
22 if it had been?

23 THE WITNESS: Yes.

24 THE COURT: How?

25 THE WITNESS: Because I control it your Honor.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 THE COURT: How do you know it?

2 THE WITNESS: I control it your Honor. It's on my
3 body, I'm the only one that can turn it
4 on or off.

5 THE COURT: You turn on the transmitter?

6 THE WITNESS: Which activates the tape recorder.

7 THE COURT: There is not a separate switch on the
8 tape?

9 THE WITNESS: No. It's an on and off switch
10 that activates it.

11 THE COURT: You are the only one who would know
12 this.

13 THE WITNESS: Yes, sir.

14 BY MR. WAGNER:

15 Q. Well, Mr. Petronella, in any event, did you
16 listen to the tape?

17 THE COURT: I will overrule the objection.

18 MR. COSTA: Your Honor, may I note my exception
19 for the record. Mr. Petronella has not
20 been qualified as an electronics expert
21 in this area as to whether or not he could
22 tell from the tape, listening to the tape
23 whether or not it has been turned on or off.

24 THE COURT: It is up to the jury to believe this
25 or not to believe it, of course, but if

1 myself or do you prefer --

2 THE COURT: I will give them a brief instruction
3 at this point but, of course, I will give
4 them more particular instruction at the
5 close of the case when it more readily
6 comes to their mind. I will cite the
7 situation now and particularize later.

8 MR. COSTA: Your Honor, as all trial lawyers must
9 do, I accept your ruling but I take
10 respectful exception to it.

11 THE COURT: You may.
12 Bring up the jury.

13
14 (Jury Present.)

15
16 THE COURT: Now we concluded a little early
17 last evening because we did have this
18 one legal argument concerning a certain
19 point in the case and we have resolved
20 that at this juncture, so we will move
21 ahead with the examination, and I expect
22 at an early appropriate point that I will
23 give you some word as to what my decision
24 is, but it is a little premature yet.

25 Go ahead.

1 J O S E P H P E T R O N E L L A, (134 West Eagle
2 Street, Buffalo, New York) a witness called on and in
3 behalf of the Government, having been previously duly
4 sworn, resumed the stand and testified further as
5 follows:

6
7 DIRECT EXAMINATION BY MR. WAGNER: (CONTINUED)

8 Q. Mr. Petronella, sir, following your contact,
9 personal visual contact with Mr. Jones on February
10 28, 1977, did you have any additional conversations
11 with him at all, sir?

12 A. Yes.

13 Q. I would like you to tell the jury when the first
14 one was?

15 A. On the 8th of March, 1977.

16 Q. Do you recall approximately what time of day that
17 was, sir?

18 A. Early afternoon.

19 Q. How was it that you contacted Mr. Jones?

20 A. I phoned him, I called him on the phone, on the
21 telephone.

22 Q. And do you recall where you made that call from
23 sir?

24 A. 134 West Eagle in the Narcotics Office.

25 Q. That is your office?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- 1 A. Yes.
- 2 Q. Did you get a voice on the other end?
- 3 A. Yes, I did.
- 4 Q. Do you know whose voice it was?
- 5 A. That of Mr. Jones.
- 6 Q. You recognized it?
- 7 A. Yes,, sir.
- 8 Q. I would like you to tell the jury as best you
- 9 can recall what you said to Mr. Jones at that
- 10 time and what he said to you?
- 11 A. I told Mr. Jones that I was the person that he
- 12 did the thing with earlier, he stated that he
- 13 knew who I was, I told him that I would have
- 14 more of those things pertaining to stamps and
- 15 he stated that he wanted more but that he wanted
- 16 me to call him the following day and that he
- 17 would tell me how many he wanted.
- 18 Q. Do you recall having any further conversation
- 19 with him at that time, sir?
- 20 A. Yes.
- 21 Q. And what was that about?
- 22 A. On the 9th of March --
- 23 Q. I'm sorry. Back on the 8th, anything else at that
- 24 time?
- 25 A. No, sir.

1 Q. About how long did the conversation take place?

2 A. A few minutes.

3 Q. Did you call him at the collision shop, do you
4 know, sir?

5 A. Yes, I did.

6 Q. Now did you see him again or have any conversations
7 with him a second time?

8 A. The 9th of March.

9 Q. Approximately what time of day was that, sir?

10 A. Early afternoon.

11 Q. Again, from where did you make the call, sir?

12 A. 134 West Eagle, the Narcotics office.

13 Q. Did you call the same number?

14 A. Yes,, I did.

15 Q. And who did you get?

16 A. Mr. Jones.

17 Q. Did you recognize his voice?

18 A. Yes.

19 Q. I would like you to again, sir, tell the jury
20 as best you can recall what you said to Mr. Jones
21 at that time and what he said to you?

22 A. At that time Mr. Jones stated to me that he
23 wanted four thousand dollars worth of food
24 stamps, in return he would give me a thousand
25 dollars in cash and that he wanted me to stop

1 by Friday between three and four P.M.

2 Q. Now Friday would have been following that --

3 A. Yes, the 11th of March.

4 Q. Did you have any further conversations with him
5 at that time, sir?

6 A. No, I did not.

7 Q. So the record is clear did you ever stop back
8 on the 11th of March on Friday?

9 A. I did not myself, no.

10 Q. That deal was never consummated, is that right?

11 A. No, it was not.

12 Q. Was that pretty much the extent of your investi-
13 gation with respect to Mr. Jones?

14 A. Yes.

15 MR. WAGNER: I have nothing else, your Honor.

16 THE COURT: Now, ladies and gentlemen, the evidence
17 that you have just heard relative to these
18 conversations on March 8th and March 9th
19 are admitted in evidence through Mr.
20 Petronella and over the objection of Mr.
21 Costa representing the defendant, and
22 it is that point that we have been dealing
23 with. As you will find out in greater detail
24 when I instruct you on the law that is going
25 to control your deliberations and decisions

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 you will find that it is necessary for
2 the Government to prove that in connection
3 with this basic alleged criminal activity
4 that there was a certain intent and knowledge
5 on the part of Mr. Jones that must be proved.
6 And also you have understood from the
7 questioning when you were selected that
8 there well might be a defense of what we
9 call entrapment, namely that Mr. Jones
10 is claiming or will claim that he had
11 no disposition or intent or other inclination
12 to get into this type of activity except
13 that the Federal agent or the Sheriff's -
14 the people from the Sheriff's Department
15 acting with the Federal agent came to him
16 and really led him into this path of
17 criminality and consequently entrapped him.
18 And as I again will tell you later, the
19 defense of entrapment can be met and must
20 be met by Mr. Wagner of showing either
21 that there was no such entrapment or urging
22 or leading Mr. Jones into it or that Mr.
23 Jones had a predisposition, a willingness
24 prior to that time to engage in that type
25 of activity. And if the Government shows

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 either of those circumstances beyond a
2 reasonable doubt, and of course, I will
3 tell you more about that level of proof
4 later, then the defense of entrapment is
5 not present and available for Mr. Jones.
6 I have admitted this evidence concerning
7 these conversations as bearing upon the
8 issues of Mr. Jones' intent on February
9 25 and February 28 on the issue of Mr. Jones'
10 knowledge on February 25 and February 28,
11 on his motivation on February 25 and February
12 28, it has not been admitted to show pre-
13 disposition or pre-event willingness to
14 go along into this activity so consequently
15 it has come in for one purpose, intent
16 and knowledge and motive. It is not in the
17 case as bearing upon the defense of entrap-
18 ment. I mention that at this time and
19 I will give you more details of course,
20 later before you go to your deliberation.

21
22 CROSS-EXAMINATION BY MR. COSTA:

23 Q. Good morning.

24 A. Good morning.

25 Q. Initially when you took the stand, sir, I thought

Edna J. Paczynski

OFFICIAL REPORTER, U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 I heard you say that you live at 134 West Eagle
2 Street, I don't imagine that you live there, do
3 you?

4 A. No. That's the residence I use when I testify.

5 Q. That is the residence you use when you testify?

6 Okay. Fine. Incidentally what kind of a facility
7 is 134 West Eagle Street?

8 A. A public building.

9 Q. And --

10 A. It houses the Sheriff's Department.

11 Q. And it houses your area of activity, narcotics
12 investigation?

13 A. Plus other departments in the Sheriff's Department.

14 Q. Now you have had some broad experience in under-
15 cover work, about six years, you told us?

16 A. Yes.

17 Q. Now, during that period of time I assume that
18 you had some on-the-job experience or some
19 training relative to the use of electronic
20 recording equipment?

21 A. Yes, sir.

22 Q. And I assume you have also had training concerning
23 the use of electronic recording equipment to record
24 telephone conversations?

25 A. Yes, sir.

1 Q. Now, back on March 8 or 9, was such equipment
2 available to you?

3 A. No.

4 Q. Where was that equipment?

5 A. There was only one ear jack bug for the phone
6 that Mr. Shortall had with his tape recorder.
7 We didn't have it.

8 Q. Were there any other investigators available?

9 A. In our department that had the phone jack, not
10 to my knowledge.

11 Q. No. I'm just talking about other investigators,
12 I didn't say about phone jacks, sir. Maybe you
13 didn't quite understand my question. Were there
14 any other people around in the department when
15 you made your call to Mr. Jones on the 8th?

16 A. I believe Sergeant Constantino was one of them,
17 I don't know who else.

18 Q. The telephones that you have in your office,
19 do they have - in a sense they are like an
20 extension phone that you can pick up another phone?

21 A. Yes.

22 Q. And listen in on a conversation?

23 A. Yes, but there's a hollow sound if you do, yes.

24 Q. Well, did you make any arrangements to have any-
25 body listen in on these conversations with you and

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Mr. Jones?

2 A. No.

3 Q. Would you call it good police practice and procedure
4 to do so?

5 MR. WAGNER: Your Honor, I will object to what is
6 good practice.

7 THE COURT: Overruled.

8 BY MR. COSTA:

9 A. I didn't --

10 Q. Well, you have done it in the past, haven't you,
11 sir?

12 A. Pick up the other receiver, no.

13 Q. You have had instructions on how that's done?

14 A. No. There's a hollow sound. We have done it,
15 you can realize another phone is open, at least
16 with our phones.

17 Q. You mean the other party on the other line can
18 determine that there is somebody listening in
19 on that conversation?

20 A. Yes.

21 Q. Have you talked to these people on the other
22 end of the line when you have had that kind of
23 situation and this is what they have told you?

24 A. We have tested it and with our phone system in
25 our office, there's five phones on one line, and

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 there's a hollow sound and you can tell the
2 receiver is open.

3 Q. This is a fairly important situation that you were
4 going to talk to Mr. Jones about, wasn't it?

5 A. Yes.

6 Q. And you couldn't defer it, you called him the
7 next day, how about the next day?

8 MR. WAGNER: Your Honor, again I'll object. He
9 starting to argue with Mr. Petronella
10 about it. He is not questioning him.

11 THE COURT: He is entitled to a little arguing.
12 Overruled.

13 BY MR. COSTA:

14 Q. Let's get back again. Was the equipment available
15 on the 9th?

16 A. Not to my knowledge.

17 Q. Did you make any inquiry about it?

18 A. Yes. Mr. Shortall had the phone jack that we
19 were using.

20 Q. Is it part of your work responsibility to make
21 a report if this equipment wasn't available?

22 A. No.

23 Q. Now, in this particular investigation you used
24 an informant?

25 A. Yes.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Q. And I think you told us his name is Mr. Riley?

2 A. Yes.

3 Q. Now, did you have any other information about
4 Mr. Jones at thistime?

5 A. I don't understand the question.

6 Q. Other than what Mr. Riley had told you or not
7 told you, did you have any other information about
8 Mr. Jones' activities prior to your going out to
9 see him on the 25th?

10 A. A conversation with Sergeant Constantino, yes.

11 Q. And was that put in any report?

12 A. No.

13 Q. Did you make any independent check about Mr.
14 Jones?

15 A. No.

16 Q. Did you call up the Buffalo Police Department
17 or your own Sheriff's Department and get what
18 they call a NICES report on Mr. Jones?

19 A. No.

20 Q. Would you explain to the jury what a NICES
21 report is?

22 A. A criminal record check of the person.

23 Q. Now, did Mr. Riley give you any information con-
24 cerning that Mr. Jones had purchased any food
25 stamps?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- 1 A. Yes.
- 2 Q. From whom?
- 3 A. From Mr. Riley.
- 4 Q. Did you give Mr. Riley the Stamps?
- 5 A. No.
- 6 Q. Did Mr. Riley indicate to you how many stamps
7 he bought from him?
- 8 A. No.
- 9 Q. Did he show you the money?
- 10 A. No.
- 11 Q. Did you ask him for it?
- 12 A. The transactions Mr. Riley had with Mr. Jones --
- 13 Q. Answer the question sir. Did you ask Mr. Riley
14 for the money he received for the alleged sale
15 that Mr. Jones and he had been engaged in?
- 16 A. It happened a while back, no.
- 17 Q. Did Mr. Riley indicate the date that it happened?
- 18 A. Within the year, yes.
- 19 Q. Did you get any more specifics from Mr. Riley?
- 20 A. Pertaining to Mr. Jones?
- 21 Q. No. This transaction that he told you about.
- 22 A. Yes.
- 23 Q. Did you put that in a report of some sort?
- 24 A. No.
- 25 Q. Now, at the time that you went to the scene of

1 Q. Mr. Riley told about other occasions that he
2 had sold food stamps to Mr. Jones?

3 A. He stated that on numerous times he had trans-
4 actions with Mr. Jones pertaining to food stamps.

5 Q. Did he give you the dates, times, places or
6 amounts?

7 A. No.

8 Q. Do you have any way of verifying whether or
9 not these were accurate or true?

10 A. Mr. Riley is a reliable informant.

11 Q. Well, that isn't what I asked you, sir. I asked
12 you did you make any other independent investi-
13 gation to determine whether or not this was so?

14 A. I checked on the character of Mr. Jones with
15 Sergeant Costantino and Sergeant Constantino
16 knows Mr. Jones.

17 Q. Fine. I'm talking about did you verify the
18 question about Mr. Riley and food stamps,
19 where he got the food stamps himself, if he was
20 getting food stamps, what quantity he was getting,
21 when he got them?

22 A. No.

23 Q. You made no independent investigation to determine
24 the validity of what Mr. Riley told you?

25 A. No.

1 A. I don't recall. Probably prior to going to the
2 Grand Jury room.

3 Q. Did you give this information to Mr. Wagner prior
4 to going to the Grand Jury room?

5 A. From the date that the investigation started
6 to prior to going into the Grand Jury room.

7 Q. Now, this information was available to yourself
8 and Mr. Wagner before you went into the Grand
9 Jury room?

10 A. Yes, sir.

11 Q. Did you testify about it in the Grand Jury room?

12 A. Yes.

13 Q. What specifically did you testify to in the
14 Grand Jury Room about prior transactions about
15 Mr. Riley and Mr. Jones, prior purchases of
16 food stamps? What did you specifically say at that
17 time, if you remember?

18 A. To Mr. Jones' activities prior to the 25th?

19 Q. Yes, about buying food stamps?

20 A. Nothing pertaining to food stamps.

21 Q. You did not tell the Grand Jury about any prior
22 purchases by Mr. Jones and Mr. Riley about food
23 stamps?

24 A. No, I don't recall.

25 Q. Was there any reason, was it asked of you, were you

Edna J. Paczyński

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

67

Direct examination of Raymond Joseph Schmit,
Identification Officer, City of Buffalo Police
Department.

1 (Witness Excused)

2
3 THE COURT: The witness has been in the courtroom.

4 MR. COSTA: It's all right. I asked Mr. Wagner
5 for permission. He's not a reputation
6 witness.

7 MR. WAGNER: Mr. Costa asked me and I gave him
8 permission.

9 THE COURT: I don't want any loopholes in the rules.
10 All right. Go ahead.
11

12 R A Y M O N D J O S E P H S C H M I T, (12083
13 Genesee Road, Alden, New York) a witness called by
14 and in behalf of the Defendant, after having first
15 been duly sworn, was examined and testified as follows:
16

17 DIRECT EXAMINATION BY MR. COSTA:

18 Q. Mr. Schmit, you're here as the result of a
19 subpoena served on the City of Buffalo Police
20 Department Identification Bureau?

21 A. That's correct, sir.

22 Q. What's your responsibility in that office?

23 A. I'm an Identification Officer in the Evidence,
24 Crimes and Search Unit.

25 Q. And is your office in charge of what is commonly

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 the local arrest and criminal record involving
2 individuals who might live in the City of
3 Buffalo or have a record in the City of Buffalo?

4 A. That's correct, sir.

5 Q. Now would you get your subpoena out, sir.

6 A. I have it here.

7 Q. Now, that subpoena requires you to bring the
8 criminal arrest records for four individuals?

9 A. That's correct, sir.

10 Q. Did you bring those records with you?

11 A. I did, sir.

12 Q. What were the records requested?

13 MR. WAGNER: Your Honor, I might object to that.
14 I ask Mr. Costa to perhaps make an offer
15 of proof at this time because the arrest
16 records are for four people.

17 THE COURT: Let me see them.

18 MR. COSTA: They relate to --

19 THE COURT: Let me see it.

20 MR. COSTA: I'm not going to say anynames, your
21 Honor. They relate to what we feel are
22 some of the issues in this matter.

23 THE COURT: No. There is only one pertinent name
24 and that is the third one.

25 BY MR. COSTA:

1 Q. Did you bring the record of a Mr. James Arthur
2 Riley?

3 THE COURT: I told you the third one on there,
4 and that is Mr. Jones.

5 MR. COSTA: Mr. Jones.

6 BY MR. COSTA:

7 Q. Did you bring the record of Mr. Jones?

8 A. I was unable to bring in a record with the data
9 submitted. There is no Ray Jones with the data
10 submitted in our files, sir.

11 Q. Are you telling us that a person by the name of
12 Ray Jones with the data submitted -- would you
13 please tell us what the data submitted requested
14 so far as Ray Jones is concerned, name, date
15 of birth, social security number?

16 A. That's correct, sir. On that basis the search
17 was made.

18 Q. What was the data submitted, give us the date
19 of birth, and social security number?

20 A. The date of birth is 6/18/37 and the social
21 security number is 238hyphen 30 hyphen 5326.

22 Q. How far did you search your records?

23 A. A complete search.

24 Q. From what date to what date? From date of birth?

25 A. Well, we would scan it, using the name and date of

1 birth and that would be it.

2 Q. So at least in the period from 1937 to 1977, there
3 was nothing found?

4 A. Nothing, sir.

5 MR. COSTA: Your Honor, may I see you and Mr. Wagner.

6
7 (Sidebar Conference Had Off the Record
8 Between Court and counsel)
9

10 MR. COSTA: Okay, Mr. Schmit, you will please leave
11 your records here and you are going to be
12 subject to recall at a later time. I don't
13 know if that will be this afternoon or
14 tomorrow morning, but I will ask the Court
15 to remind you that your office is under
16 subpoena as well as yourself. If you will
17 advise us when you can return, make yourself
18 available, I assume we can call you at
19 the ID Bureau and you can get over here
20 inside of a few minutes?

21 THE WITNESS: I don't know, sir. I'm on call to
22 respond to the scene of a crime, at any time,
23 once I get back there. However, if his
24 Honor will request, I'll try to get a
25 replacement if he orders that.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

72

Direct examination of Robert Barton

- 1 A. Yes, sir.
- 2 Q. Would you describe that vehicle for us?
- 3 A. A red --
- 4 Q. If you saw it.
- 5 A. Yes, I saw it. It was a red Monte Carlo.
- 6 Q. And what did you observe about that vehicle?
- 7 A. There was two men in it.
- 8 Q. Could you describe those persons for us?
- 9 A. One was black, one was white, the black man
- 10 was driving.
- 11 Q. What else did you observe.
- 12 A. One man got out of the car, the white man, and
- 13 Ray left his seat and walked to the door to
- 14 meet him, and he turned around and went back to
- 15 the car and opened the trunk and got something
- 16 out and came back and him and Ray were talking
- 17 in the hallway outside the office.
- 18 Q. And where were you?
- 19 A. I was sitting in the office against the far wall.
- 20 Q. And was the door opened or closed?
- 21 A. Yes, it was open.
- 22 Q. Did you ever hear any of the conversation that
- 23 was had between the parties?
- 24 A. I could not hear it clear, no, they were talking
- 25 low.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 not go to the res gestae exception.

2 THE COURT: As I say, I don't know whether there is
3 any facet of the admissibility of res
4 gestae evidence has anything to do with the
5 availability of other evidence.

6 MR. WAGNER: Well, I would submit that that is a
7 facet of it your Honor.

8 THE COURT: All right. Bring back the jury.

9 MR. COSTA: Your Honor, since we have broached
10 the subject about the agent I will try to
11 elicit --

12 THE COURT: About what?

13 MR. COSTA: -- about the agent I will try to
14 elicit a description from Mr. Barton.

15

16 (Jury Present)

17

18 DIRECT EXAMINATION CONTINUED BY MR. COSTA:

19 Q. Before we get to what Mr. Jones told you when
20 he came in after meeting with the man, would
21 you please give us a description of this man
22 that you saw in the hall, what he was wearing,
23 his attire, any other aspect of his description
24 that would be helpful in identifying this person?
25 A. Well, like I say, I really couldn't recognize him

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 I wouldn't recognize him right now if he was
2 standing here. Well, somebody just pointed him
3 out in the hallway so far as his face. I know
4 he was medium --

5 THE COURT: Wait a minute. You say someone did
6 just point him out in the hallway?

7 THE WITNESS: Yes, in the hallway just before I
8 come in here, and said it was him. I
9 would never recognize him face to face.

10 THE COURT: So you don't know, you just said
11 someone else told you that?

12 THE WITNESS: That's right, your Honor.

13 BY MR. COSTA:

14 Q. What was his --

15 THE COURT: No. Wait a minute. He said he does
16 not know.

17 MR. COSTA: He does know what he was wearing your
18 Honor.

19 THE COURT: Do you know what he was wearing?

20 THE WITNESS: Yes, sir.

21 THE COURT: Now or then?

22 THE WITNESS: Then.

23 THE COURT: All right. What was he wearing?

24 THE WITNESS: He was wearing a large overcoat, fur
25 overcoat, and everything happened so fast

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



76

Direct and cross examination of Russell Baker,
Detective City of Buffalo Police Department.

1 R U S S E L L W. B A K E R, (42 Frederic Road,
2 Tonawanda, New York,) a witness called by and in
3 behalf of the Defendant, having been first duly sworn,
4 was examined and testified as follows:
5

6 DIRECT EXAMINATION BY MR. COSTA:

7 Q. Mr. Baker what is your occupation?

8 A. Detective, Buffalo Police Department.

9 Q. How long have you been so employed?

10 A. Ten years.

11 Q. During that period of time have you come to meet
12 and know a Mr. Ray Jones?

13 A. Yes.

14 Q. And when was that?

15 A. I have known Ray as an occasional acquaintance
16 when I was drag racing and when he acquired the
17 business at Fillmore and Mohican, I'd stop in
18 occasionally. When I was promoted to Detective
19 December 1, 1971, and went to the new Narcotics
20 Squad, it was approximately three weeks later
21 that Mr. Jones called me at the Narcotics Squad
22 and informed me of a --

23 THE COURT: No.

24 BY MR. COSTA:

25 Q. That's all right. You can't go into that at this

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 time Mr. Baker.

2 A. Okay.

3 Q. You got to know Mr. Jones over a period of years?

4 A. Yes, I'd say approximately twenty years.

5 Q. Did you ever get to meet any of his business
6 acquaintances or friends or people in that area?

7 A. Yes.

8 Q. Are you familiar with Mr. Jones' reputation for
9 truthfulness and honesty?

10 A. Yes.

11 Q. What is his reputation for truthfulness and
12 honesty?

13 A. Unquestionable integrity.

14 Q. Now, of course, you are familiar now that he
15 has been charged with purchasing some food
16 stamps in an unauthorized manner?

17 A. Correct.

18 Q. Now since the nature of that charge have you
19 heard any rumors or information or data which
20 would change your opinion - sorry - or change
21 anybody's opinion as far as his reputation is
22 concerned for truthfulness and honesty?

23 A. No.

24 MR. COSTA: You may ask.

25

1 CROSS-EXAMINATION BY MR. WAGNER:

2 Q. Mr. Baker, sir, you have known Mr. Jones for
3 about twenty years you say?

4 A. Approximately, as an occasional acquaintance.

5 Q. How often do you see Mr. Jones?

6 A. I'd say I stop in his shop maybe once a month.

7 Q. Do you stop in there for business purposes?

8 A. I stop and converse with him and --

9 Q. Do you stop in there for business purposes?

10 A. Maybe twice a year.

11 Q. And the rest of the time is social, for social
12 purposes?

13 A. Yes.

14 Q. Do you ever see him socially anywhere else?

15 A. I attended Mr. Felicetta's retirement testimonial
16 with him.

17 Q. Dinner party?

18 A. Right.

19 Q. Do you ever see him anywhere else, dinners,
20 parties?

21 A. No, not that I recall.

22 Q. Do you have a family yourself?

23 A. Yes.

24 Q. Are they friendly with Mr. Jones' family if you
25 know?

1 A. Yes, occasionally we get together.

2 Q. You have family get togethers?

3 A. No. The wife and I.

4 Q. His wife and your wife and you and Mr. Jones?

5 A. Maybe once in three, four, five years.

6 Q. Now, do you know a lot of other people that know
7 Mr. Jones?

8 A. Yes.

9 Q. Have you talked to them about his reputation?

10 A. No.

11 Q. You do not, is that what you said?

12 A. No, I don't discuss people's reputations.

13 MR. WAGNER: Well, your Honor, on the basis of that
14 answer --

15 BY MR. WAGNER:

16 Q. I take it that that's because you're a professional
17 police officer?

18 A. Right.

19 MR. WAGNER: On the basis of that, your Honor, I
20 ask that this witness' testimony be stricken.

21 MR. COSTA: Well, your Honor, he has testified
22 that he is familiar with Mr. Jones'
23 reputation among his business acquaintances
24 and his friends.

25 THE COURT: He said he never talked with anybody

1 about it.

2 MR. COSTA: But he is familiar with it.

3 MR. WAGNER: Well, I would suggest the witness
4 may have been giving a personal opinion
5 which is not the type of evidence that's
6 admissible.

7 THE COURT: Is that true, you were giving a
8 personal opinion of his reputation?

9 THE WITNESS: Correct, this is my personal opinion.
10 I don't ask other people's opinions about
11 Mr. Jones or anybody else.

12 THE COURT: Is there anything outside of your
13 own personal opinion that leads you to this
14 conclusion who you have dealt with and
15 known in the past outside of your own
16 dealings with him.

17 THE WITNESS: On the occasions that I have been in
18 the shop, I have watched him conduct his
19 business and he's very truthful and honest.

20 BY MR. WAGNER:

21 Q. That's from your personal observations?

22 A. Yes.

23 THE COURT: I will grant Mr. Wagner's motion and
24 direct the jury to ignore Mr. Baker's --

25 MR. COSTA: Might I --

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 THE COURT: -- testimony concerning the event.

2 MR. COSTA: Might I ask further questions of Mr.
3 Baker on this subject, your Honor.

4 THE COURT: No. I think it has been explored and
5 I think Mr. Baker has been very frank and
6 honest in, one, his opinion of Mr. Jones
7 and also the basic details for the opinion.

8 MR. COSTA: Can we excuse the jury on another
9 question, your Honor.

10 THE COURT: No. No, I have made my ruling on
11 that. We will put it on the record in due
12 course.

13 MR. COSTA: I would like to make an offer of
14 proof in that area.

15 THE COURT: I am allowing you to make an offer
16 of proof in that area in due course. You
17 have my ruling on it in advance. You can
18 make your offer of proof on it as soon
19 as we get - well, we will do it at recess.

20 MR. COSTA: All right, fine.

21 You will have to wait outside, Mr. Baker.

22 THE COURT: Well, he won't have to wait outside
23 because the offer of proof I have indicated
24 what my ruling is going to be so it is a
25 matter of putting it in to the record.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Direct examination of Michael Barton

1 You won't have to wait, Mr. Baker.

2
3 (Witness Excused)

4
5 M I C H A E L P A T R I C K B A R T O N, (55 Melrose
6 Grand Island, New York) a witness called by and in
7 behalf of the defendant, having been first duly sworn,
8 was examined and testified as follows:

9
10 THE COURT: Let me ask this, Mr. Costa, is this
11 relating to the same episode and the same
12 line of testimony you were to elicit from
13 Robert Barton?

14 MR. COSTA: No.

15 THE COURT: Mr. Barton had said his brother
16 Michael was there.

17 I assume you are the brother of Robert,
18 are you?

19 THE WITNESS: Yes.

20 THE COURT: All right. If there is something
21 different, go ahead.

22
23 DIRECT EXAMINATION BY MR. COSTA:

24 Q. Mr. Barton, on February 28th, 1977 were you at
25 1736 Fillmore Avenue?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A. Yes, I was.

2 Q. Do you know what time you got there?

3 A. Approximately noon, one o'clock.

4 Q. Sometime after you arrived at the premises, did
5 another person come to the premises?

6 A. Yes, two people came.

7 Q. And how did they come?

8 A. A red Monte Carlo.

9 Q. And could you give us some physical description
10 of these people.

11 A. I saw a profile of the driver, I believe he was
12 a black man, and on the passenger side was
13 a man with dark hair wearing a large fur coat.

14 Q. Was there any other characteristics about him?

15 A. Nothing that I can readily say. He may have had
16 a beard, he was wrapped up pretty tight.

17 Q. Now, you've been waiting in the ante room?

18 A. Yes.

19 Q. And while you were waiting out there did you
20 recognize that person?

21 A. Yes, I saw him when he walked in.

22 Q. Who was that?

23 MR. WAGNER: Your Honor, I will object to that.

24 I'm not sure what Mr. Costa is getting at
25 so it's hard to phrase an objection.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

86

Direct and cross examination of Defendant,
Ray Jones

1 you, have you ever been charged with any crime?

2 A. No, I have not.

3 Q. And, of course, you have never been convicted
4 of any crime?

5 A. No, sir.

6 Q. Do you know a person by the name of James Arthur
7 Riley?

8 A. No, I do not.

9 Q. Do you know a person by the name of Ronnie
10 Manns?

11 A. Yes, I do.

12 THE COURT: What is that last name?

13 MR. COSTA: Ronnie Manns, M-A-N-N-S.

14 THE WITNESS: I'm pretty sure that's the way he
15 spells it.

16 BY MR. COSTA:

17 Q. Now, of course, you have been seated in the
18 Courtroom during the entire proceeding?

19 A. Yes, I have.

20 Q. And you heard Officer or Agent Petronella testify
21 that on February 25, 1977 an informant or a person
22 by the name of James Arthur Riley came into the
23 Courtroom?

24 A. Yes.

25 Q. Now, you have occasion to see Mr. Riley in the court-

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 room while we had the audibility hearing?

2 A. Yes.

3 Q. And have you ever seen this person before?

4 A. No.

5 Q. Did this person that came into your office
6 on February 25th 1977, was it Mr. Riley.

7 A. No.

8 Q. Who was it?

9 A. It was Ronnie Manns.

10 Q. Well, could you give us some physical characteristics
11 about Mr. Ronnie Manns?

12 A. He's a very thin individual, has a high receding
13 hairline, and he's a black man.

14 Q. Have you had a chance to look at some photographs
15 of Mr. Riley and Mr. Manns?

16 A. Yes, I have.

17 Q. And based on these photographs which were identified
18 to you as Mr. Manns and Mr. Riley --

19 MR. WAGNER: I will object to the leading question;
20 also if he knows people from seeing them
21 personally I don't know why Mr. Costa wants
22 to ask him if he knows they are different
23 because he has seen photographs of them.

24 MR. COSTA: Let me finish the question, Mr. Wagner.

25 THE COURT: Finish your question.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 BY MR. COSTA:

2 Q. And the photograph that was indicated to you as
3 being James Arthur Riley, was that the same
4 person that was seated in the courtroom?

5 A. Yes.

6 Q. And it was not the other person who was Ronnie
7 Manns?

8 A. No.

9 Q. On February 25th, this Mr. Manns came into your
10 office?

11 A. Yes.

12 Q. And did you have some discussion with him?

13 A. Yes, I did.

14 Q. And what did Mr. Manns say and what did you your-
15 self say at that time?

16 A. He asked me, he told me he had food stamps for
17 sale.

18 Q. Was there anybody else present at the time?

19 A. No.

20 Q. Well, what did you tell him when he asked you that?

21 A. I told him that I wasn't interested.

22 Q. Had you had any prior meetings or dealings or
23 occasions with this Mr. Mann of his coming into
24 your office for any reason?

25 A. Yes.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Q. Well, in any event, back in - comes February
2 1977 and he comes into your office?

3 A. Yes.

4 Q. And you told him you were not interested. What
5 happened after you told him you were not interested?

6 A. The telephone rang, I got busy in my office and
7 he left my office.

8 Q. And after that what happened?

9 A. He reappeared a short time after that with a
10 white man.

11 Q. Who you now know to be?

12 A. Officer Petronella.

13 Q. And was Mr. Manns present when Mr. Petronella
14 was present?

15 A. Yes, he was.

16 Q. And what was said by yourself and what was said
17 by Mr. Manns or Mr. Petronella at that time?

18 A. When they first entered my office Mr. Petronella
19 says to me, "I understand you want food stamps."
20 I told Officer Petronella, well the white male
21 that I told him that I was not interested, and
22 the discussion of price came up. I explained
23 to him at that time that fifty cents on a dollar
24 was too much money and at that time Officer
25 Petronella told me, "Well, a third is a little

1 cheaper." And also he went one step farther
2 and he says, "I'll take anything I can get
3 for them."

4 Q. What happened after that?

5 A. The price of bickering back and forth and
6 well to go back a little bit, I was afraid
7 and --

8 THE COURT: You were what?

9 THE WITNESS: I was afraid, I was scared.

10 BY MR. COSTA:

11 Q. Now, Mr. Jones, let's to get to that issue at
12 this point. Let's break off what was going on
13 between Agent Petronella and Mr. Manns. Has
14 your place ever been held up?

15 A. Yes, it was.

16 Q. How many times?

17 A. Once.

18 Q. Were you also the subject of an extortion --

19 A. Yes, I was.

20 Q. -- scheme?

21 A. Yes, I was.

22 THE COURT: Don't lead the witness.

23 BY MR. COSTA:

24 Q. What other kind of criminal activity happened
25 to your premises or to yourself, give us your best

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 recollection of what's happened to your place
2 and just what happened last night?

3 A. My life's been threatened approximately twelve
4 times.

5 THE COURT: Last night does not matter.

6 BY MR. COSTA:

7 A. I was bound and gagged and robbed at the point
8 of shotgun and a straight razor. My life was
9 threatened in an extortion attempt in which a
10 man was arrested in my office. My place of
11 business has been burglarized about twelve times.
12 My windows have been beat out on too numerous
13 occasions to even think about counting.

14 Q. Now as a result of some of those experiences,
15 did you have any contact with any officers of
16 the Buffalo Police Department?

17 A. Yes, many times.

18 Q. And did you receive some advice from them
19 concerning your dealings with people who might
20 have some criminal activity in mind?

21 A. Yes. The time that I was robbed --

22 MR. WAGNER: I will object to the advice he received,
23 that's hearsy.

24 THE COURT: He said yes, that is sufficient.

25 BY MR. COSTA:

1 Q. As a result of that advice did they indicate
2 to you that you should take certain course of
3 action?

4 A. Yes, they did.

5 Q. Was that in your mind at the time that you
6 were discussion this situation with this Mr.
7 Manns and Agent Petronella?

8 A. Yes, it was.

9 Q. Let's return to that 25th, you were bickering
10 about price?

11 A. Yes.

12 Q. What further happened at that time?

13 A. At that point of the game knowing what I had
14 been advised by the Buffalo Police Officers
15 that - how to conduct myself when I knew I
16 was dealing with an individual who was involved
17 or I may think was involved with drugs.

18 MR. WAGNER: Your Honor, I'll object to that, it's
19 improper.

20 THE COURT: What?

21 MR. WAGNER: Well, his believe about --

22 THE COURT: Overruled.

23 THE WITNESS: May I continue?

24 BY MR. COSTA:

25 Q. Yes, you can continue Mr. Jones.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A. And at that point is when I was alarmed at the
2 fact that I was being robbed because of the
3 activities of the two individuals who had presented
4 themselves in my office with the big fur coat,
5 this is the way a shot gun is carried for the
6 purpose of robbery.

7 MR. WAGNER: Well, your Honor, I'll object to
8 that.

9 MR. COSTA: Well, your Honor, he's testifying
10 as to state of mind.

11 THE COURT: Overruled. Go ahead.

12 BY MR. COSTA:

13 Q. Go ahead.

14 A. I was aware of the fact that Mr. Petronella
15 had something underneath his coat on his
16 left hand side and his hand remained in the
17 pocket, and again this is identical to the way
18 that I was previously robbed. At that point of
19 the game, I was frightened to the point that I
20 assumed that the actual conversation that was
21 going on was merely a front, and at that point
22 of the game I had tried to defer - the main
23 purpose was selling food stamps and I deferred
24 to the point where I refused the price, I refused
25 the amount, I was going to have a bargaining with

1 him.

2 Q. What did you decide to do next?

3 A. At that point of the game, my revolver was behind
4 me in my hand, and at that point of the game I
5 did not want to question what he had under his
6 coat. I -- He threw five hundred dollars
7 worth of food stamps down on my desk, at that
8 point of the game I had to make a decision, either
9 to buy the food stamps or arrest him myself, and
10 the state of mind that I was in, I knew that if
11 I pulled my gun out and pointed it at him, and
12 he moved or even batted an eye, I would shoot
13 him. And at that point of the game, I didn't
14 want to jeopardize his life and did not want
15 to jeopardize my own so I chose to go along with
16 the food stamps.

17 Q. You made arrangements to buy the stamps from him?

18 A. Yes, I did.

19 Q. And you gave him money?

20 A. Yes, I did.

21 Q. Did they leave?

22 A. Yes, he did.

23 Q. Was this other black male that you know as Ronnie
24 Manns still with him?

25 A. Yes, he was.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Q. They left together?

2 A. They left together.

3 Q. Did you receive any further contact that same
4 day?

5 A. No, I did not.

6 Q. When is the next occasion that you had any
7 contact with Agent Petronella?

8 Well, let's get back to before they left. Did
9 you make any further arrangements with them at
10 that time to get some more food stamps?

11 A. He indicated to me that he would have the food
12 stamps over the weekend, that I should call
13 my friends and see if they want some. I explained
14 to him before he came back for him to check with
15 me first, and I was hoping to have enough time
16 before a meeting to arrange sort of an ambush
17 with the Buffalo Police Department and have him
18 arrested.

19 Q. Well, when did he contact you?

20 A. He contacted me on the 28th.

21 Q. Did he come back to your place?

22 A. Yes, he did.

23 Q. Now, did he come back alone?

24 A. No, he did not.

25 Q. What kind of car was he driving?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A. A red Monte Carlo.

2 Q. Do you remember who the other person was that
3 was driving the vehicle?

4 A. It was a black male.

5 Q. Can you give us any further description?

6 A. No.

7 MR. WAGNER: Your Honor, Mr. Costa is tending to
8 lead the witness and I am asking him not
9 to do that.

10 THE COURT: Yes.

11 MR. COSTA: Well, your Honor, I didn't think I
12 was leading, but - that's Mr. Wagner's view.

13 THE COURT: And you won't in the future.

14 MR. COSTA: I'll try not to, your Honor.

15 BY MR. COSTA:

16 Q. Was there anyone with him?

17 A. Yes, there was.

18 Q. Could you give us some description of him?

19 A. He was a black male, he was behind the wheel of
20 the Monte Carlo which was parked directly in front
21 of my place of business.

22 Q. Were you able to get the license number?

23 A. No. The car was positioned in a manner in which
24 the license plates were not visible from the
25 front of the building.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Q. Did Mr. Petronella then come into your premises?

2 A. Yes, he did.

3 Q. Did you have a conversation with him?

4 A. Yes, I did.

5 Q. Would you tell us what you recall about that
6 conversation?

7 A. He came to the door, a customer of mine was
8 leaving and which startled not only me but my
9 customer to the point to his not only the way
10 he was acting but also the way he was dressed.
11 Again, he startled me to the point where when
12 I did see him coming I felt that I should indicate
13 to this individual that I did have a weapon and
14 that I did have the weapon for my personal
15 protection. I removed my jacket. As I walked out
16 of my office as I saw him approaching my place
17 of business he - as I say my customer was just
18 leaving, I merely walked out with my customer
19 he met us at the door, as we opened the door
20 he was there. At that point, he again tried to
21 entice me outside, and again my first instinct
22 is why he wants me outside. And after having my
23 life threatened on a number of occasions, I chose
24 not to go outside and I chose that he come inside,
25 and he did, and at that time, he told me that he had

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 two hundred dollars worth of food stamps, that
2 he wanted sixty-five dollars for them. Again,
3 I knew - I didn't know what to do because again
4 I was alarmed to the point of where I still felt
5 that the position of the car across the driveway
6 was a clear shot to take off in case of a fast
7 exit, and also the point where we could not obtain
8 the license plate number. Again I was alarmed
9 to the fact that it was a robbery. And again
10 following my advice that I have had from very
11 capable individuals I chose not to be a hero in
12 the whole matter and to more or less go along
13 with the program which was presented to me.

14 Q. Well, wasn't there some discussion about some
15 about purchasing more food stamps?

16 A. Yes, there was. He told me that all he had was
17 two hundred dollars and that he would have to go
18 and get some more. At that point of the game, we
19 discussed - he discussed with me calling my
20 friends and seeing if my friends want some again
21 and how many, and at that point, of the game,
22 he left and told me he would be back.

23 Q. Was there any discussion about your weapon in any
24 way?

25 A. Yes, there was.

1 Q What was said, if anything else by yourself -

2 A. As he walked in --

3 Q. Just a minute, sir. Ray what was said by yourself
4 and what was said by Agent Petronella?

5 A. As he first originally walked into my office -
6 or not into my office, excuse me, he walked into
7 the hallway leading to my office in which I was
8 out in the shop in the work area, and when he
9 was aware of the fact that I did have a weapon
10 on me because I made it quite obvious, it was
11 sticking out of my belt, is when he jumped back
12 and he says, "I don't dig you being here with a
13 gun, and me naked.", at that point of the game
14 he tried to trade me two hundred dollars worth
15 of food stamps for my weapon, at that time, I told
16 him they hadn't printed enough food stamps to
17 purchase the weapon yet. He indicated to me at
18 that time, not that particular weapon, he meant
19 an illegal weapon, I told him at that particular
20 time I didn't know anything about illegal weapons,
21 that I couldn't and I have a legal one. He went
22 one step farther after that, he says, "Well, what
23 about merchandise?", he says, "Trade me the food
24 stamps for merchandise.", and at that time even
25 again I was alarmed as to what his true meaning

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 was, I told him I didn't know what he meant
2 about merchandise, I fix cars for a living and
3 that I have bent fenders is all I deal in.

4 At that point --

5 (Sidebar Conference had off the record
6 between Court and counsel)

7 BY MR. COSTA:

8 Q. I'm sorry for interrupting Mr. Jones, but you
9 can continue.

10 A. At that point of the game, I didn't really under-
11 stand him as to what his intent was or what he
12 meant to do. I asked him, "What is it you want?",
13 and that's when he turned around and stepped back
14 into the hallway leading to the outer door and
15 told me that he would have the food stamps and
16 that he would see if he could get me another
17 thousand dollars worth, and again, I was standing
18 in the shop area and I asked him, "What is it
19 you want?", and at that particular time he left.

20 Q. Now, of course, you have been present during
21 the playing of the tapes?

22 A. Yes.

23 Q. And you have heard the tapes?

24 A. Yes.

25 Q. Apparently from your testimony --

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 THE COURT: Don't lead the witness.

2 BY MR. COSTA:

3 Q. You have heard the tapes?

4 A. Yes.

5 Q. Do the tapes fully and completely contain all
6 of the conversation you had between Agent
7 Petronella and yourself on the two occasions?

8 A. No, sir.

9 Q. What omissions are there, according to your best
10 recollection?

11 A. In the first tape, he almost demanded and suggested
12 at great length about me calling my friends and
13 seeing how many food stamps they wanted. And
14 the second tape two distinct things come to my
15 mind readily is the part about him wanting to
16 trade the food stamps for my weapon and also for
17 merchandise. And also in the second tape he also
18 again told me to call my friends and see how many
19 food stamps they wanted.

20 Q. Were there any other sounds on the tapes that
21 you could identify as referring to possibly not
22 being related to the tape or referring to other
23 individual who were present at the time?

24 A. Yes, sir. In the first tape there's laughter at
25 the point where he says, "I don't dig coming in here

Edna J. Paczynski

OFFICIAL REPORTER, U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 with them."

2 THE COURT: That is tape number one?

3 THE WITNESS: Yes.

4 BY MR. COSTA:

5 A. There was laughter in the background of his
6 companion he had with him at the time which was
7 Ronnie Manns.

8 Q. Now, on March 3, 1977 did you have any personal
9 or telephone communication or conversation with
10 Agent Petronella?

11 A. Pardon me, the date?

12 Q. March 8th.

13 A. No.

14 Q. How about March 9th?

15 A. No.

16 Q. Now, you have heard Deputy Petronella testify
17 that on those two occasions he called you on
18 the telephone and there was some further discussion
19 about you buying some more stamps?

20 A. It never took place.

21 Q. Well, was the agent mistaken?

22 MR. WAGNER: Your Honor, I don't think he should
23 give an opinion as to the agent being
24 mistaken or not. I think he can say whether
25 it took place or not. The jury will decide

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 whether the agent was mistaken, not Mr.
2 Jones. I object to that, your Honor.

3 THE COURT: Obviously he can say whether or not
4 something that was testified to is in error
5 or wrong. He can't say whether it was
6 falsely stated or whether the agent was
7 lying.

8 MR. COSTA: I haven't asked him that, your Honor.

9 THE COURT: I understand you have not.

10 Certainly if he knows the state of facts
11 which have been testified to at another time
12 and differently he is entitled to say whether
13 or not his version is correct and obviously
14 the implication is here it was, quote,
15 mistaken, unquote, I see no problem with
16 that.

17 BY MR. COSTA:

18 Q. Was the agent mistaken?

19 A. Yes.

20 Q. Well, was there possibly some other telephone
21 calls that you got from Deputy Petronella on
22 some other date that he may have been referring
23 to?

24 A. No.

25 Q. There were only two occasions where you had any

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 personal conversation with Agent Petronella and
2 no telephone calls of any sort?

3 A. I had one telephone call from Officer Petronella.

4 Q. That was after the 25th and before the 28th?

5 A. Yes.

6 Q. And nothing subsequent?

7 A. No.

8 THE COURT: Whenever you hit an appropriate point.

9 BY MR. COSTA:

10 Q. Now, you took the stamps home with you?

11 A. Yes.

12 Q. And you used them?

13 A. Yes.

14 Q. Have you told us everything that happened between
15 you, Deputy Petronella and this man by the name
16 of Ronnie Manns?

17 A. Yes. As briefly as I have been allowed.

18 Q. Now, you have also heard Deputy Petronella
19 testify have you not, concerning some activities
20 on your part in dealing with stolen merchandise?

21 A. Yes.

22 Q. What about that?

23 A. He must be mistaken.

24 Q. You have never been arrested for anything like
25 that have you?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Q. You heard that in Court and you heard it at another
2 time is that right?

3 A. Yes.

4 Q. Did you have a copy of the transcript with you?

5 A. Yes.

6 Q. Did you read along with it?

7 A. Yes.

8 Q. And it is your version that that is not accurate,
9 is that right, sir?

10 A. Yes.

11 Q. Now, Mr. Jones, what I would like to do is ask
12 you this, sir, do you recall Mr. Petronella
13 saying to you on February 25th, 1977, "What's
14 happening?", and you responded "Nothin much."
15 Did that happen?

16 A. Yes, it did.

17 Q. Did Mr. Petronella say to you, "I know, I mean I
18 don't dig comin in with'em. That's why.", did
19 he say that to you?

20 A. Yes.

21 Q. And did you respond to him, "Ok, have a seat.
22 Whadda ya got here?"

23 A. Yes, sir.

24 Q. Do you recall telling Mr. Petronella and Mr.
25 Petronella saying, "I got ah stamps."?

1 A. Yes.

2 Q. And you said, "Uh how many?" do you recall that?
3 Do you recall saying that, sir?

4 A. Yes.

5 Q. And do you recall Mr. Petronella saying to you,
6 "A thou."?

7 A. Yes.

8 Q. And do you recall the response by yourself,
9 "I can't handle a thousand."?

10 A. Yes.

11 Q. Do you recall Mr. Petronella saying, "What could
12 you handle? I'm looking for a third."?

13 A. Yes.

14 Q. And your response sir, "Well, he's talkin' fifty
15 cents. . .", Petronella interrupts, "Well," you
16 say "Cents on the dollar.", you recall that?

17 A. Yes.

18 Q. That's accurate?

19 A. Yes.

20 Q. Do you recall Mr. Petronella saying, "A third
21 is a little better for you."

22 A. Yes.

23 Q. And your response was "Huh," and Mr. Petronella
24 said, "A third is cheaper.", and you said, "Well,
25 what are we gonna do?", is that accurate?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A. Yes.

2 Q. To the best of your recollection?

3 A. Yes.

4 Q. Do you recall Mr. Petronella saying, "Three and
5 a quarter for a thou."?

6 A. No.

7 Q. You don't recall that?

8 A. No.

9 Q. Do you recall you saying, "Three and a quarter
10 for a thou? I can't . . . damn, I can't get
11 rid, I can't get rid of that many." Did you
12 say that?

13 A. I recall that.

14 Q. You do?

15 A. Yes.

16 Q. This transcript then, sir, is essentially accurate
17 as far as you can tell.

18 A. No.

19 Q. That part I just read was accurate?

20 A. That's right, yes.

21 Q. Do you recall Mr. Petronella saying to you, "No?"
22 and you responding, "Unless I talk to him.", was
23 that said?

24 A. Would you read that again, please.

25 Q. Mr. Petronella said, "No?" and your response, "Unless

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 I talk to him."?

2 A. Yes.

3 Q. That was said?

4 A. Yes.

5 Q. And do you recall Mr. Petronella saying, "Three
6 hundred.", and you responding, "I can't handle . . .
7 ah . . . I can't handle . . ." I'm sorry - Mr.
8 Jones said, "I can handle. . . ah . . . I can
9 handle half of them for ya."

10 A. Yes.

11 Q. You said that?

12 A. Yes.

13 Q. Do you recall Mr. Petronella saying to you,
14 "Gimme three hundred."

15 A. No.

16 Q. Do you recall you saying to Mr. Petronella,
17 "I can't, I ain't got three hundred first of all."?

18 A. Yes.

19 Q. And Mr. Petronella said, "Alright." and you
20 responded "And I can't get rid of 'em. I did all
21 the checking I could get.", did you say that?

22 A. Yes.

23 Q. Mr. Petronella, do you recall him saying, "Alright,
24 five hundred for a hundred and a half."?

25 A. Yes.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

recall

1 Q. And do you/responding, "Five hundred for a hundred
2 and a half? Deal. Fifty-dollar books?"

3 A. Yes.

4 Q. Mr. Petronella responded, "Forty."?

5 A. Yes.

6 Q. And you said, "Forty-dollar books?"

7 A. That's right.

8 Q. Do you recall hearing the tapes and do you recall
9 that being accurate?

10 A. Yes.

11 Q. Do you recall Mr. Petronella saying, "That's four
12 hundred, four eighty, seven, fourteen, sixteen,
13 eighteen, twenty. That's five hundred." as he
14 counted out the stamps to you?

15 A. Yes.

16 Q. And do you recall saying to him, "A hundred and fifty
17 bucks. Good deal."

18 A. Yes.

19 Q. And at that point, sir, was it when you handed
20 over to Mr. Petronella one hundred and fifty
21 dollars in cash?

22 A. Yes.

23 Q. And then do you recall Mr. Petronella saying,
24 "I don't dig you being here with a gun and me
25 with nothin."

A. Yes. That wasn't the exact context but I recall

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- 1 him saying that --
- 2 Q. Do you recall that --
- 3 A. Not on that particular day.
- 4 Q. You don't recall him saying that on the 25th?
- 5 A. No.
- 6 Q. Do you recall a conversation similar to that
- 7 on the 28th?
- 8 A. Yes.
- 9 Q. Is there a chance Mr. Jones that you may have
- 10 those two dates mixed up, sir?
- 11 A. No.
- 12 Q. You're sure about that?
- 13 A. Yes.
- 14 Q. You're sure that was not said that day?
- 15 A. Yes.
- 16 Q. Do you recall Mr. Petronella further saying, "Well,
- 17 I'll have 'em for the weekend if you want me
- 18 to stop back or . . .?"
- 19 A. Yes.
- 20 Q. That was said?
- 21 A. Yes.
- 22 Q. The point about the gun was not said that day?
- 23 A. No.
- 24 Q. You're sure?
- 25 A. Yes.

1 MR. COSTA: Weil, your Honor, it's the third time
2 that he's asked that question.

3 THE COURT: He is entitled to. He has not abused
4 his privilege as cross-examiner yet.

5 BY MR. WAGNER:

6 Q. Now, Mr. Petronella had said to you, "I'll have'em
7 for the weekend if you want me to stop back.",
8 and your response was, "Check with me, alright?"
9 do you recall saying that?

10 A. Yes.

11 Q. Mr. Petronella said, "When?" do you recall him
12 asking you that?

13 A. Yes.

14 Q. And do you recall responding, "I'll be here
15 tomorrow."?

16 A. Yes.

17 Q. And Mr. Petronella said, "Alright, what time?"

18 A. Yes.

19 Q. And you responded, "around noon."?

20 A. Yes.

21 Q. Mr. Petronella said, "Ok. How about later
22 than that, or no?"

23 A. Yes.

24 Q. And did you respond, "No, I close, I close around
25 three, Ok."?

1 A. Yes.

2 Q. And that's true, you do close around three,
3 is that right?

4 A. Yes.

5 Q. Do you recall Mr. Petronella then saying to
6 you, "Alright if I come anytime between ...ah...
7 twelve and three?", and you responded, "Ten and
8 three."?

9 A. Yes.

10 Q. And do you recall Mr. Petronella then saying, "Ten
11 and three tomorrow? Ok. That's a hundred and
12 fifty. Ok Ray.", do you recall that?

13 A. Yes.

14 Q. And do you recall you saying, "Ok, thank you."?

15 A. Yes.

16 Q. And Mr. Petronella said, "Just ask for you Ray?"?

17 A. Yes.

18 Q. And you responded "Right." and Mr. Petronella said
19 "Ok." do you recall that?

20 A. Yes.

21 Q. So what I read to you that you have said here
22 and you recall was an accurate statement of what
23 occurred that day, is that right, sir?

24 A. Except for the gun.

25 Q. Except for the matter about the gun, is that right?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A. As it's written down, yes.

2 Q. And you heard the tape?

3 A. Yes.

4 Q. And the transcript and the tape are pretty
5 similar are they not, sir?

A. Yes.

7 Q. Now, Mr. Jones you gave Mr. Petronella a hundred
8 and fifty dollars in cash that day, isn't that
9 right?

10 A. Yes.

11 Q. And you took the food stamps from him, isn't
12 that right sir?

13 A. Yes.

14 Q. And did you know at that time, sir, that that
15 was not the proper way for a person to get
16 food stamps?

17 A. Yes.

18 Q. You realized that that was an improper way
19 for getting food stamps?

20 A. Yes.

21 Q. Did you know that that was a violation of law
22 at that time, sir?

23 A. Yes.

24 Q. Now, Mr. Jones, Mr. Petronella called you back
25 on the morning of the 28th, did he not, sir?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Q. You don't dispute that fact with Mr. Petronella?

2 A. No.

3 Q. Now when Mr. Petronella came in on the 28th,
4 sir, he testified what happened in court and
5 we played the tape for you on that particular
6 occasion, is that right?

7 A. Yes.

8 Q. You heard that tape?

9 A. Yes.

10 Q. You have heard that tape before, have you not?

11 A. Yes.

12 Q. And you saw a transcript that day of the tape?

13 A. Yes.

14 Q. Do you recall, sir, Mr. Petronella saying to you,
15 when he came in, "How ya doin. I got in the
16 trunk. I don't wanna come in for'em."

17 A. Yes.

18 Q. And do you recall saying to Mr. Petronella,
19 "I can't do that out here."

20 A. Yes.

21 Q. Is it your recollection, sir, that Mr. Petronella
22 said, "Oh, I don't care, it's just me. . ." and
23 you responded, "Damn." do you recall that?

24 A. Yes.

25 Q. Do you recall Mr. Petronella saying, "They're only

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 four here. Ray? I only brought the two of'em.
2 Well that's what you wanted. What did you want?",
3 do you recall him saying that?

4 A. Yes.

5 Q. And you responded, "Wanted all of'em.", correct?

6 A. Yes.

7 Q. And Mr. Petronella laughed, he said, "Oh, ha!" and
8 you said, "I wan'ta sell the whole grand for you."
9 Correct?

10 A. That's the way it's stated, but it's not the
11 way it happened.

12 Q. That's not accurate what I just read?

13 A. No.

14 Q. You did not say that?

15 A. No.

16 Q. You're sure about that?

17 A. Yes.

18 Q. The other material I read you did state though?

19 A. Yes.

20 Q. Do you recall Mr. Petronella saying, "Yea, but who
21 knew?" and you said, "Huh?", do you recall that?

22 A. No.

23 Q. Do you recall hearing it on the tape?

24 A. I recall hearing it on the tape, yes.

25 Q. Is it your testimony, sir, that that did not happen

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- 1 or that you just don't recall saying it?
- 2 A. I don't recall saying it and I don't recall
- 3 hearing it said.
- 4 Q. You don't recall hearing it on the tape?
- 5 A. I recall hearing it on the tape, yes.
- 6 Q. Are you saying that you didn't say it or that
- 7 you just don't remember saying it?
- 8 A. I said that I don't recall him saying it at the
- 9 time. I heard it on the tape, yes.
- 10 Q. You're not disputing it, you just can't recall.
- 11 A. I can't recall.
- 12 Q. Do you recall saying to Mr. Petronella, "I'd
- 13 a sold the whole grand for you."?
- 14 A. I heard that on the tape, yes.
- 15 Q. Do you recall saying it?
- 16 A. I don't recall saying it, no.
- 17 Q. By the way Mr. Jones, when you listened to the
- 18 tape did you recognize Mr. Petronella's voice?
- 19 A. Yes.
- 20 Q. Did you recognize your voice?
- 21 A. Yes.
- 22 Q. And was Mr. Petronella's description of who
- 23 was who accurate?
- 24 A. Who was who?
- 25 Q. Which voice was his and which voice was yours?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A. Yes.

2 Q. Was he correct on that?

3 A. Yes.

4 Q. He correctly identified the two voices?

5 A. I don't think there was any identification
6 of the two voices.

7 Q. Well, Mr. Petronella testified that the
8 transcripts were correct and that the voices
9 and the names of the transcript matched up
10 properly, is that right?

11 A. Yes.

12 Q. In other words, Mr. Petronella said that voice
13 effectively is mine, Mr. Petronella, and that
14 voice is Ray Jones, was he wrong on that or
15 right on that?

16 A. He was right.

17 Q. He was right. Do you recall Mr. Petronella --
18 Stepping back one minute, sir. The statement
19 on the transcript of the statement that was
20 heard on the tape attributed to you, "I'd a sold
21 the whole grand for you." Do you recall saying
22 that?

23 A. I don't recall saying that, no, sir.

24 Q. Did you hear it on the tape?

25 A. Yes.

119

- 1 A. Yes.
- 2 Q. Now, by the way, Mr. Jones, between the phone
3 call and the time Mr. Petronella came how much
4 time elapsed, as best you can recall?
- 5 A. From three to five minutes.
- 6 Q. He arrived within three to five minutes of calling
7 you?
- 8 A. Yes.
- 9 Q. Did you call the police in that three to five
10 minutes?
- 11 A. No, I did not.
- 12 Q. Did you call the Sheriff's Office?
- 13 A. No.
- 14 Q. Did you call the F.B.I.?
- 15 A. No.
- 16 Q. Did you call any police agency at all?
- 17 A. No.
- 18 Q. Did you lock your store up?
- 19 A. No.
- 20 Q. Do you recall -- Getting back to the taped
21 conversation, sir, on the 28th of February,
22 which you heard in Court here, do you recall
23 Mr. Petronella saying to you, "I'll have to...
24 ah... come back. How long will you be here?"
- 25 A. Yes.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Q. He said that to you?

2 A. Yes.

3 Q. And do you recall saying to him, "Be here another
4 fifteen twenty minutes. Can you make it back by
5 then? Can ya? Alright, what've we got
6 here sixty bucks?" Did you say that to Mr.
7 Petronella?

8 A. Yes.

9 Q. And did he say to you, "Sixty-five dollars worth?"

10 A. Yes.

11 Q. And you responded, "Sixty-five dollars worth. Alright
12 there's sixty ... and there's five."

13 A. Yes.

14 Q. And at that time, sir, is it not the case that
15 you handed Mr. Petronella or counted out sixty-
16 five dollars in cash?

17 A. Yes.

18 Q. And you gave it to him?

19 A. Yes.

20 Q. And Mr. Petronella said to you, "Alright how much
21 money ya got there? What is it you want?", and
22 you responded "Huh?", and Mr. Petronella said,
23 "Tell me how much... how much more do ya want?"
24 Did he say that?

25 A. That's the way the tapes say it.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Q. What happened in real life?

2 A. In real life, I was the one who said, "What
3 do you want."

4 Q. And did Mr. Petronella say to you, "Alright how
5 much money ya got there?"

6 A. Yes.

7 Q. And you say that you said, "What is it you want?"

8 A. Yes.

9 Q. And Petronella said to you, did he not, sir,
10 "Tell me how much... how much more do ya want?"

11 A. Yes.

12 Q. He said that to you?

13 A. Yes.

14 Q. I'm not talking about what you heard on the tape,
15 I'm talking about what you remember happening?

16 A. That's what's on the tape, that's not what
17 happened.

18 Q. That's not what happened?

19 A. No. At the point at the end of the sixty-five
20 dollars, when he took the sixty-five dollars,
21 he left.

22 Q. I'm sorry?

23 A. He left my premises when he took the sixty-five
24 dollars.

25 Q. Do you recall Mr. Petronella saying to you, "Sixty

1 five dollars worth," and you said, "Sixty-five
2 dollars worth alright there's sixty... and there's
3 five.", that happened in real life?

4 A. Yes.

5 Q. And Mr. Petronella walked out then?

6 A. Yes.

7 Q. He left the shop?

8 A. Yes.

9 Q. He didn't talk to you anymore?

10 A. No.

11 Q. What about Ronnie Manns?

12 A. There was no one else with him inside the premises
13 at that time.

14 Q. Anybody else there with you?

15 A. Yes.

16 Q. Who?

17 A. My two brothers-in-law.

18 Q. And Mr. Petronella you're sure picked up the
19 sixty-five dollars and walked out at that point?

20 A. Yes.

21 Q. What about the stamps, what happened to them?

22 A. The stamps?

23 Q. The food stamps.

24 A. I put them in my pocket.

25 Q. He had given them to you?

1 A. Yes.

2 Q. And how many food stamps had he given to you?

3 A. Two hundred dollars worth.

4 Q. Now, Mr. Jones, do you recall the taped conver-
5 sation having additional material on it?

6 A. Yes.

7 Q. And it's your testimony that that did not occur?

8 A. Yes.

9 Q. That Mr. Petronella had left the shop at that
10 point?

11 A. Yes.

12 Q. And so the record is clear, Mr. Jones, I'm going
13 to ask you a couple of questions about that.
14 You're saying that Mr. Petronella did not say
15 to you, "Tell me how much ... how much more do ya
16 want?" Is that right?

17 A. Right.

18 Q. He did not say it?

19 A. No.

20 Q. And you did not say to him, "Well, what do you, Gimme
21 another eight hundred dollars worth. Eight hundred
22 dollars would be what?" You didn't say that?

23 A. No.

24 Q. Did you hear the tape the other day?

25 A. Yes, I did.

- 1 Q. Did you hear those words being said by someone?
- 2 A. Yes, I did.
- 3 Q. Whose voice was that?
- 4 A. It sounds similar to mind, but it doesn't sound
- 5 totally like my voice, not to me.
- 6 Q. Do you recognize whose voice it is?
- 7 A. No, I do not.
- 8 Q. It's not your voice then?
- 9 A. I'll again say it doesn't sound like my voice.
- 10 Q. And your testimony is that your recollection is
- 11 that you never said that?
- 12 A. That's right.
- 13 Q. And furthermore, that tape doesn't sound like
- 14 your voice?
- 15 A. That portion of the tape.
- 16 Q. That part of the tape, correct?
- 17 A. Right.
- 18 Q. So we're clear here. Do you recall Mr. Petronella
- 19 on the tape saying, "Two sixty."
- 20 A. Yes, I recall that, yes.
- 21 Q. But that didn't happen in real life?
- 22 A. No.
- 23 Q. You're sure?
- 24 A. Not inside my place of business, no.
- 25 Q. How about outside your place of business?

1 A. It didn't happen outside my place of business.

2 Q. It didn't happen anywhere, so far as you know?

3 A. I wouldn't know. We got to the point I told you
4 when he left.

5 Q. Do you recall the tape having a statement attributed
6 to you by Mr. Petronella, "Two fifty?" I gave ya
7 sixty-five so that would be a hundred eighty-
8 five dollars more. Right? You owe me eight
9 hundred dollars more." Do you recall the tape
10 having that on there?

11 A. Yes, I do.

12 Q. That was not your voice?

13 A. No. It sounds like my voice, but I didn't say it.

14 Q. And you didn't say it?

15 A. No.

16 Q. Do you recall on the tape a voice attributed
17 to Mr. Petronella saying, "Alright." and you
18 saying, "Ok." and him, Petronella, saying,
19 "Ok Ray." Do you recall that on the tape?

20 A. Yes.

21 Q. And that didn't happen either?

22 A. No.

23 Q. You're sure about that?

24 A. To my nearest knowledge, no.

25 Q. Sir, your testimony is you had no conversation

Edna J. Paczynski

OFFICIAL REPORTER. U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

110

1 the right way to go about acquiring food stamps?

2 A. Yes.

3 Q. You knew that that was an illegal action, isn't
4 that right, sir?

5 A. Yes.

6 Q. By the way, Mr. Jones, did you ever apply for
7 food stamps at that time?

8 A. Yes.

9 Q. And that was on February 20th?

10 A. I think so, yes.

11 Q. That was after this transaction?

12 A. Pardon me?

13 Q. That was after these two transactions?

14 A. No.

15 Q. I'm sorry.

16 MR. COSTA: Just a minute.

17 Your Honor, I think it's obvious
18 from the date, Mr. Wagner, February 20th,
19 chronologically must be before the 25th --

20 MR. WAGNER: I'm sorry.

21 MR. COSTA: -- and 28th sir.

22 MR. WAGNER: I'm sorry. I misspoke.

23 BY MR. WAGNER:

24 Q. That was before your transactions with Mr.
25 Petronella?

- 1 A. He didn't.
- 2 Q. After the 28th?
- 3 A. He never called me back.
- 4 Q. He never talked to you at all?
- 5 A. No.
- 6 Q. He didn't talk to you on the 8th of March?
- 7 A. No.
- 8 Q. And he didn't talk to you on the 9th of March?
- 9 A. No.
- 10 Q. Did anyone call you, sir, following the 28th
- 11 transaction in regard to buying food stamps?
- 12 A. No.
- 13 Q. Did you ever, sir, other than applying for food
- 14 stamps from the County on February 20th acquire
- 15 food stamps from anyone else other than Mr.
- 16 Petronella?
- 17 A. Other than the ones that I stood in line and got.
- 18 Q. Right. You got food stamps on three occasions,
- 19 one from the County and twice from Mr. Petronella
- 20 correct?
- 21 A. Yes.
- 22 Q. And did you ever apply for them or get them
- 23 any other way?
- 24 A. No.
- 25 Q. Any other time in your past?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 your friends want some."

2 Q. What else did he say?

3 A. At that particular time he started into the
4 negotiation of price.

5 Q. What did he say about the price at that point?

6 A. At that point is where he - I had indicated
7 to him that I had told his friend that fifty
8 cents on the dollar was too much money.

9 Q. Well, Mr. Jones, I don't want you to jump ahead,
10 I'm looking at the point where you said you
11 resisted, what else was said there at that point
12 before we go on with the other information on the
13 transcript?

14 A. That was about the extent of it.

15 Q. That was it, you said you didn't want them?

16 A. Yes.

17 Q. He said call your friends?

18 A. Yes.

19 Q. According to your version?

20 A. Yes.

21 Q. All right. What else on that transcript, sir,
22 or where else in that transcript did you resist
23 buying the food stamps from Mr. Petronella?

24 A. No place.

25 Q. It was just that one time?

- 1 A. Yes.
- 2 Q. By the way, Mr. Jones, the rest of it was
3 accurate, is that right, sir?
- 4 A. To the best of my knowledge.
- 5 Q. To the best of your knowledge.
- 6 A. From what I heard and read.
- 7 Q. Now, you mentioned, by the way, also sir, that
8 you had a choice on the 25th conversation of
9 either buy the food stamps from Mr. Petronella
10 or arresting him, is that right?
- 11 A. Yes.
- 12 Q. What do you mean by arresting him?
- 13 A. At that point, you either make an act or you don't.
14 I have had to do it before.
- 15 Q. Well, what --
- 16 A. I mean if I put my gun on him, I would have had
17 to have assumed the role of making a citizen's
18 arrest.
- 19 Q. Did you consider that option at that time?
- 20 A. Yes, I did.
- 21 Q. And you rejected it, I take it?
- 22 A. Yes, I did.
- 23 Q. You mentioned also that Mr. Petronella had his
24 hand in his pocket?
- 25 A. Yes.

1 Q. Did you lock your door?

2 A. No.

3 Q. Did you say anything to the customer you had
4 with you?

5 A. I didn't have a customer with me.

6 Q. Correct me if I'm wrong, but I recollect you
7 saying that you were walking out with a customer
8 as Mr. Petronella was coming in?

9 A. The customer was outside my office door.

10 Q. Did you say anything to that customer who was
11 outside your office door?

12 A. I opened the door for him, yes.

13 Q. Did you alert the customer to a possible robbery
14 going on in your business?

15 A. No, I did not.

16 Q. Mr. Jones, I would also like you to take a look
17 at Government Exhibit 6, do you recognize that
18 sir, as the transcript we talked about earlier?

19 A. Yes.

20 Q. And you had a copy of that earlier?

21 A. Yes.

22 Q. And you read along with it when the tape was played?

23 A. Yes.

24 Q. Mr. Jones, I would like you to tell the jury
25 where on that particular transcript, as the Judge

1 mentioned earlier where in the chronology
2 of events that you resisted Mr. Petronella's
3 efforts to sell you food stamps, sir?

4 A. First of all, the second line where, "Can't do
5 that out here."

6 Q. The words say, attributed to you, Jones, "Can't
7 do that out here." is that right?

8 A. Yes.

9 Q. Did you say that?

10 A. Yes.

11 Q. What about that, do you want to add something
12 now to that?

13 A. That's what was said.

14 Q. Okay. Where else does it say in the transcript
15 sir, anything about resisting Mr. Petronella?

16 MR. COSTA: Well, your Honor, I'm going to at
17 this point object to the line of questioning
18 concerning about resisting. If we're
19 talking about physical action or verbal
20 action or planned action or activity, I
21 think it ought to be brought out in that
22 sense, but not the question of taking
23 physical force in the situation.

24 THE COURT: No one is talking about physical force.

25 The witness has gone along with the idea

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 in fact it was his testimony that he
2 had resisted the overtures on food stamps.
3 Now, I don't know if that's true if he
4 said that.

5 You said that?

6 THE WITNESS: Yes, your Honor.

7 THE COURT: Go ahead.

8 BY MR. WAGNER:

9 Q. Mr. Jones, I would like you to look at the
10 Exhibit 6 and tell us in addition to the statement
11 "Can't do that out here," where else on that
12 transcript or where else it should be on that
13 transcript your resistance to Mr. Petronella
14 based on your recollection of the events of
15 that day?

16 A. Right after where, "Oh, I don't care, it's just
17 me..." is where he entered my hallway entering
18 my place of business and is when he recognized
19 that I had a gun, and that's when he says he was
20 alarmed at the fact that I did have a weapon at
21 which I removed my jacket as I left my office --

22 Q. How did you know Mr. Petronella -- I'm sorry,
23 go ahead.

24 A. -- to let him know that I had a weapon.

25 Q. Where did you have a weapon?

Edna J. Paczynski

OFFICIAL REPORTER, U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A. In my belt.

2 Q. How did you know Mr. Petronella was alarmed?

3 A. Because he jumped back, at that time he said,
4 "I don't dig you being here with a gun and me
5 naked."

6 Q. And that was said on the 28th?

7 A. Yes.

8 Q. You're sure about that?

9 A. Yes.

10 Q. Where should that have been inserted on the
11 transcript, Mr. Jones?

12 A. Where it says, "Oh, I don't care, it's just me..."
13 after that.

14 Q. Okay. Where else, Mr. Jones, if anywhere, do
15 you resist buying food stamps from Mr. Petronella?

16 A. No place.

17 Q. From your recollection?

18 A. No place.

19 Q. Mr. Jones, from your recollection, where on that
20 transcript, Government Exhibit 6 do you have a
21 conversation with Mr. Petronella wherein he urges
22 you to call your friends?

23 A. It's not there.

24 Q. Where should it be?

25 A. Right before where he says, "Alright how much

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 money ya got there? What is it you want?", well,
2 actually that's two different parts there. "Alright,
3 how much money ya got there," is what Petronella
4 said, "What is it you want?" is what I said.

5 Q. Okay. And you're telling the Jury that when you
6 said, "What is it you want?", that was a conversation
7 about Mr. Petronella urging you to call your
8 friends to sell food stamps to them?

9 A. Yes.

10 Q. It doesn't say it on there does it, sir?

11 A. No.

12 Q. Mr. Jones, where else on the transcript if any
13 place else is there a conversation between you
14 and the agent about your friends?

15 A. No place.

16 Q. There isn't?

17 A. No.

18 Q. Where should it be based on your recollection?

19 A. I just explained it to you.

20 Q. Anywhere else in addition to that?

21 A. No.

22 Q. So your testimony is when you said to Mr.
23 Petronella, "What is it you want?", that was
24 a conversation wherein Mr. Petronella was urging
25 you to call your friends?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A. No.

2 Q. What are you saying

3 A. I'm saying that this is in the same general
4 conversation where he was enticing me to call
5 my friends and see how many food stamps they
6 want, and he also tried to trade me food stamps
7 for my weapon, he also tried to trade me food
8 stamps for merchandise, and at the end of him
9 trying to negotiate for merchandise I asked him
10 "What is it you want?"

11 Q. So your comment, "What is it you want," came after
12 that? Is that right?

13 A. Yes.

14 Q. And your comment, "What is it you want," also
15 came after Mr. Petronella urged you to call
16 your friends?

17 A. Yes.

18 Q. That's your testimony?

19 A. Yes.

20 Q. And your testimony, sir, is that after saying
21 that to you, Mr. Petronella - you said to him,
22 "what is it you want," and that was it, that
23 was the end of the conversation?

24 A. That was when he gave me the two hundred dollars
25 worth of food stamps, and I gave him sixty-five

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Dollars.

2 Q. Anything else said that you can recall at that
3 time?

4 A. No.

5 Q. When Mr. ella handed you the stamps
6 or when you gave him the money, did you say any-
7 thing, either one of you?

8 A. He left.

9 Q. Did you say anything, either one of you?

10 A. Not that I can recall.

11 Q. What about what's on the tape, is that accurate
12 or not?

13 MR. COSTA: Well, your Honor, we have gone into
14 it before, that aspect of it, what was
15 said, he did not so state, and this is the
16 second or third time that we're going over
17 that aspect of the testimony again.

18 THE COURT: Now, this is a slightly different
19 aspect, Mr. Costa. Overruled.

20 MR. COSTA: How slightly different, your Honor,
21 so I know for the record.

22 THE COURT: I will tell you in due course.

23 MR. COSTA: Thank you.

24 THE COURT: If we don't find out.

25 MR. COSTA: Thank you.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 BY MR. WAGNER:

2 A. The only other thing that may have been said was
3 Officer Petronella said, "Ok, Ray."

4 Q. You recall Mr. Petronella saying "Ok Ray."?

5 A. Right. Just before his exit..

6 THE COURT: See, Mr. Costa, just a little bit
7 different.

8 MR. COSTA: Thank you, your Honor.

9 BY MR. WAGNER:

10 Q. So we're clear, Mr. Jones, I'm not referring to
11 what you recall hearing on the tape, but what
12 you recall happening, you may have said that?

13 A. Yes.

14 Q. Just so the record is clear, you're not testifying
15 about what you heard on the tape, but you recall
16 happening?

17 A. What I recall happening, yes.

18 Q. Correct.

19 MR. WAGNER: Your Honor, if I could just have a
20 minute to look over mynotes, please.

21 I have nothing else your Honor, from
22 Mr. Jones at this time. Thank you.

23

24 REDIRECT EXAMINATION BY MR. COSTA:

25 Q. Mr. Jones, around the 25th and 28th, what were the

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

138

Direct and cross examination of Ronnie
Manns

- 1 A. Yes, sir.
- 2 Q. I would like to ask you, Mr. Manns, if you know
3 a man by the name of Mr. Ray Jones?
- 4 A. Yes, I know him.
- 5 Q. Do you see Mr. Jones, is that Mr. Jones you know
6 in the courtroom today?
- 7 A. Yes, sir.
- 8 Q. Would you point him out for us please?
- 9 A. He's sitting right there.
- 10 Q. So the record is clear, can you describe what
11 he's wearing, where he is sitting?
- 12 A. He's wearing a gray suit.
- 13 MR. WAGNER: Let the record reflect that --
- 14 THE COURT: There are two gentlemen wearing gray
15 suits.
- 16 THE WITNESS: The gentleman with the dark hair.
- 17 THE COURT: You are talking about the man sitting
18 at the left or at the right.
- 19 THE WITNESS: At the right.
- 20 THE COURT: Let the record show Mr. Manns identified
21 the defendant, Ray Jones.
- 22 BY MR. WAGNER:
- 23 Q. Mr. Manns, I would like you to tell the jury about
24 when it was that you first met Mr. Jones if you
25 can recall sir?

1 A. No, I don't recall. I took my car in and had
2 him estimate it one time.

3 Q. You took your car where, if you can recall?

4 A. To his collision shop on Fillmore.

5 Q. Do you know whereabouts on Fillmore that is, sir?

6 A. Fillmore near East Delavan, something like that.

7 Q. Do you know if the collision shop has a name of
8 any kind?

9 A. RayJones.

10 Q. Ray Jones Collision Shop?

11 A. Yes, I'm pretty sure that's correct.

12 Q. And about how long ago was that, a week, a month,
13 a year, five years?

14 A. Several months.

15 Q. Do you know how many months that would have been?

16 A. No, I don't recall exactly, no.

17 Q. Have you seen --

18 THE COURT: Do you remember the big snow storm
19 we had, Mr. Manns?

20 THE WITNESS: Yes, sir.

21 THE COURT: Was it before that or after that would
22 you say?

23 THE WITNESS: It was way before the snow storm .

24 THE COURT: Way before the snow storm.

25 BY MR. WAGNER:

Edna J. Paczynski

OFFICIAL REPORTER. U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Q. Many months before?

2 A. I think it was warm out.

3 Q. It would have been nice weather when you were
4 there?

5 MR. COSTA: Well, your Honor, I object to this.
6 Just a minute, Mr. Wagner.

7 THE COURT: The witness says it was warm. It is
8 true Mr. Wagner is leading a little bit,
9 but in a minuscule way.

10 Go ahead.

11 It was warm weather, is that right,
12 Mr. Manns?

13 THE WITNESS: Yes.

14 BY MR. WAGNER:

15 Q. Have you seen Mr. Jones since that first
16 occasion apart from seeing him here today in
17 court?

18 A. Yes, I seen him one other time.

19 Q. Just one other time as best you can recall?

20 A. Yes.

21 Q. Where did you see him?

22 A. At the collision shop.

23 Q. Approximately when was that?

24 A. I really can't say.

25 Q. Do you recall if it was during the blizzard?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 A. No, it wasn't during the blizzard, no.

2 Q. Was it before or after that?

3 A. It had to be after that.

4 Q. Do you recall about how long a time after the
5 blizzard, sir?

6 MR. COSTA: Well, your Honor, I object to this
7 line of questioning.

8 THE COURT: Why?

9 MR. COSTA: The witness said he can't say.

10 THE COURT: He said it was after the blizzard.

11 MR. COSTA: That's all he can say.

12 THE COURT: So we don't know yet. Overruled.

13 BY MR. WAGNER:

14 Q. Do you recall, sir, what the weather was like
15 when you saw Mr. Jones following the blizzard?

16 A. I believe it was starting to get kind of warm.
17 It must have been in May, somewhere around there.

18 I'm not really too sure. I can't really say.

19 Q. And as best you recall, sir, was that the last
20 time you saw Mr. Jones prior to seeing him here
21 today?

22 A. Yes, sir.

23 Q. Now, Mr. Manns, have you ever worked in any way
24 with the Erie County Sheriff's Office?

25 A. No, sir.

1 Q. Do you know an agent by the name of Joseph
2 Petronella?

3 A. No, sir.

4 Q. Have you ever worked with a man by the name of
5 Joseph Petronella?

6 A. No, sir.

7 Q. Mr. Manns, as best you can recall, have you ever
8 worked in any sense either as an employee
9 or an informant for any police agency?

10 A. No, sir.

11 Q. And, Mr. Manns, were you in Mr. Jones collision
12 on February 25, 1977?

13 A. No, I wasn't.

14 Q. Were you working with any agent or any police
15 officers that day at all, sir?

16 A. No, sir. I never worked for no kind of police
17 at all.

18 Q. Were you in Mr. Jones' Collision Shop on February
19 25th by yourself?

20 A. No, I wasn't.

21 Q. Do you know anything about being in Mr. Jones
22 Collision Shop ever sir, with anyone else that
23 was involved with the Police Department?

24 A. No, sir.

25 Q. Or Sheriff's Department?

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 and it was at that point that we interrupted.

2
3 CROSS-EXAMINATION CONTINUED BY MR. COSTA:

4 Q. Mr. Manns you were convicted of a crime involving
5 a charge of giving a false report of an incident?

6 A. Yes.

7 Q. And when was that?

8 A. 1970, I believe.

9 Q. Can you tell us what happened in that particular
10 situation?

11 A. Like I said, a friend of mine I had let drive
12 my brother's car and he hit a pole, a concrete
13 pole, he knocked the pole down and a few people
14 got hurt in the car and I reported the car stolen.

15 Q. And in fact it had not been stolen?

16 A. No, it hadn't been stolen.

17 Q. This was an untruth, a lie?

18 A. Yes.

19 Q. Now were you in prison on June 13, 1977?

20 A. June 13th?

21 Q. Yes.

22 A. No, I wasn't.

23 Q. You were on the street?

24 A. Yes, sir.

25 Q. Do you remember going to Mr. Jones' place of business

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 on the 13th day of June?

2 A. No, I don't recall, no.

3 Q. Do you remember coming to his place and offering
4 to sell him some citizen bank radios?

5 A. No.

6 Q. Do you remember Mr. Jones telling you about
7 this situation in which he is being charged and
8 you denied the incident about the food stamps?

9 A. Yes, sir.

10 Q. And that you told him that you were in jail
11 on the 25th and 28th of 1977, do you recall
12 telling him that?

13 A. I remember saying that, but I wasn't in jail.

14 Q. Well, you told him a lie at that time too,
15 right?

16 A. What do you mean I told him a lie?

17 Q. Well, you told him you were in jail and you
18 weren't in jail?

19 A. Well, I thought I was.

20 Q. You thought you were in jail on the 25th and 28th
21 of 1977?

22 A. Yes.

23 Q. Do you know a Johnny Nelson or a John Riley?

24 A. No, I don't.

25 Q. How about a Robert Gray?

1 A. No, I don't know them.

2 Q. They are not friends of yours?

3 A. No.

4 Q. You don't live - you don't know them, you never
5 met them?

6 A. No, I haven't.

7 Q. How about a Jim Riley?

8 A. No.

9 Q. So besides seeing him in the month of May you
10 did see him also in the month of June?

11 A. I guess so. I don't recall what dates.

12 I remember him accusing me of that.

13 Q. You remember him accusing you?

14 A. Yes.

15 Q. Did you ever call Mr. Jones on the telephone?

16 A. No, I haven't.

17 Q. About how many times have you been to Mr. Jones'
18 place of business?

19 A. A few times, three or four times.

20 Q. Three or four times?

21 A. Yes.

22 Q. So it's more than the two times that you told
23 Mr. Wagner about?

24 A. Yes.

25 MR. COSTA: Thank you. Thank you very much, Mr.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

147

Government's Summation

1 to you why not. Now, the Judge will
2 discuss for you in detail what an
3 entrapment defense means, what the
4 Government must show and what the
5 elements and the aspects of entrapment
6 are. What a critical point on entrap-
7 ment claimed by the Defendant is that
8 he was completely innocent, he was an
9 unwary person, minding his own business,
10 and he was forced into conduct that he
11 was not ready --

12 MR. COSTA: Well, your Honor, --

13 MR. WAGNER: -- and willing to buy food stamps.

14 MR. COSTA: Just a minute. I have got to
15 object to Mr. Wagner's contention
16 about force. It's not my understanding
17 or your Honor's understanding about
18 the concept of entrapment about force.

19 THE COURT: Mr. Wagner is not telling what
20 the law is. He is using this term
21 which has various meanings and there
22 will be no problem.

23 Go ahead, Mr. Wagner.

24 MR. WAGNER: Mr. Jones is telling you that he
25 was forced into this and it is our

1 position and I'm asking you to find
2 that that simply is not the case.
3 Now, I'm asking you to do that for
4 this reason, the defense of entrapment
5 as the Judge will explain to you in
6 its own proper language says that if
7 a person - if contact was begun by a
8 police agency, if they initiate the
9 conduct, when a man is ready and
10 willing and able to commit the
11 offense anyway, if he's ripe to
12 commit a crime then he's not entrapped,
13 that's the law. He has to be forced
14 or coerced, his will has to be over-
15 come by the police, he has to be
16 essentially an innocent person that
17 has no predisposition to commit the
18 offense. The Judge will tell you
19 that it doesn't matter if the police
20 start the conduct as long as this
21 man was predisposed to commit the
22 crime, and I intend to tell you now
23 why the evidence shows you that Mr.
24 Jones was predisposed to commit this
25 crime anyway. Now, first of all, I

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 want to point out to you that I am
2 not telling you that the police did
3 not first contact Mr. Jones, it's
4 obvious what happened, they went in
5 to see him, As a matter of fact, the
6 testimony was by Mr. Petronella that
7 he sent the informant James Riley in
8 first to make an introduction. I
9 submit to you that that is a legitimate
10 police practice. It would be too much
11 to expect for Mr. Jones to walk into
12 the Sheriff's office some afternoon
13 and say to the Sheriff, "I'm Mr.
14 Jones, I would like to commit some
15 crime.", it's not going to happen,
16 it's never going to happen. The
17 police simply have to go out and
18 investigate crimes, they have to go
19 out and do that, and that's a proper
20 role for the police to take. So the
21 mere fact that they approached Mr.
22 Jones with these stamps does not mean
23 that he was entrapped into it. What
24 you have to ask yourself is what was
25 Mr. Jones like at that time, what was

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

his disposition when they came in to see him, when they approached him, was he ready to do it or was he unwilling, did he go along with the deal, was he able and predisposed to do it or did he say no, I don't want you in my shop, get out, I don't do that kind of stuff, I'm an honest man, I don't want anything to do with it, did he throw the agent out, that's what you ask yourself, and that's the issue in the case.

Now, first of all, when I tell you that Mr. Jones was predisposed to commit the offense, think about what he did, think about how he acted, and I ask you, of course, to do that from the testimony of the witnesses. You heard Mr. Petronella testify what happened very briefly. I submit to you that better than that we have a tape of a conversation that went on, and I'll suggest to you that that is unquestionably the best evidence for you to consider in this case because that's there for you to hear. There's

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 no dispute about it. If you believe
2 the tape there's no dispute about
3 it. The agent or the witness may say
4 I can't recall, or they used the
5 phrase my best recollection, or they
6 summarized what happened. The tape
7 doesn't do that. It tells you what
8 was said. If you believe the tape
9 you know what was said. I suggest
10 to you, by the way, that you should
11 believe the tape. The tape is in
12 evidence. So you ask yourselves in
13 deciding knowing that the agent went
14 in there, you ask yourselves what was
15 Mr. Jones like at the time, how did
16 he act, how did he behave, what was
17 his attitude, what was his disposition
18 at that time, was he ready and willing
19 to commit these crimes or was he not?
20 All right. I suggest you listen to
21 the tapes to do that, and you heard
22 the tapes, you heard it a couple of
23 times, and you can hear it again if
24 you want to while you're deliberating.
25 I have a transcript here, and I will

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 ask you again to use your recollection,
2 this is to assist me in making my
3 argument, you use your recollection.
4 The agent comes into the Jones Collision
5 Shop and says, "What's happening?",
6 and Jones says, "Nothin much.", there's
7 an unintelligible part there, Petronella
8 says, "I know, I mean I don't dig
9 comin in with'em. That's why.", Jones
10 invites him, "Have a seat.", he says,
11 "Whadda ya got here?", Petronella,
12 "I got ah stamps.", Jones, "Uh how many?",
13 he asked him how many do you have,
14 not the kind of comment a person would
15 make if they didn't want anything to
16 do with this. But let's go on.
17 Petronella tells him, "A thou.", and
18 he implies a thousand and I submit
19 to you that's the reasonable inference.
20 Jones tells him, "I can't handle a
21 thousand.", he doesn't say to him
22 get out of my store, I don't want food
23 stamps, he tells him, "I can't handle
24 a thousand.". The kind of comment a
25 person would say if they knew what

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 they were talking about who were
2 willing to deal in stamps. The
3 question I submit to you is how many
4 he's going to handle here, not whether
5 he's going to do it or not. Petronella,
6 "What could you handle? I'm looking
7 for a third.". Now, I admit to you
8 that that's street language. They
9 didn't go in there and talk like
10 scholars in a classroom, something
11 what you might find in a grammar book.
12 It's undercover work, it's a collision
13 shop on Fillmore Avenue, they talk
14 like normal people do. "I'm looking
15 for a third." Petronella says, Jones,
16 "Well, he's talkin' fifty cents --",
17 Petronella, "Well.", Jones, "Cents on
18 the dollar.". Mr. Jones is talking
19 price for food stamps, fifty cents on
20 the dollar, a discounted price, and I
21 submit to you that that is very, very
22 solid evidence that Mr. Jones knows
23 what's going on here and is looking
24 for a good price. I submit to you
25 that the man is looking for a good price

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 only if he is disposed to do it.
2 Petronella tells him that, "A third
3 is a little better for you.", Jones
4 says, "Huh?", and Petronella says,
5 "A third is cheaper.". He points out
6 that his price is better than some
7 other price. Mr. Jones may know of
8 or may be using it as a bargaining
9 tool here. Jones says, "Well what are
10 we gonna do?". Jones doesn't throw
11 him out, doesn't say what is this,
12 I don't want to buy stolen food
13 stamps or improper food stamps, I
14 don't want anything to do with that,
15 get out of my shop, he didn't say
16 that, he said, "-- what are we gonna
17 do?", he's talking about a price,
18 setting up a deal. Petronella says,
19 "Three and a quarter for a thou."
20 Did Mr. Jones reject that offer?
21 Absolutely not. He responds, "Three
22 and a quarter for a thou? I can't --
23 damn, I can't get rid, I can't get rid
24 of that many.". Well, get rid of them
25 during what, taking them to the store,

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 selling them, who knows? But I
2 submit to you that he was ready to
3 buy them, it was a question of price
4 and how many he can handle, not
5 whether he'll do it or not. Jones
6 says - Petronella says, "No?", and
7 Jones says, "Unless I talk to him.",
8 a comment that Mr. Jones admits
9 making. It's cryptic, we don't know
10 what he's referring to. Petronella
11 says, "Three hundred?", the price
12 is coming down a little bit; Jones,
13 "I can handle -- ah -- I can handle
14 half of'em for ya.". Again an
15 unlikely comment by a man who doesn't
16 want to engage in this kind of activity.
17 Petronella says, "Gimme three hundred.";
18 Jones, "I can't, I ain't got three
19 hundred first of all.". He doesn't
20 have the cash on him, that's why he's
21 not dealing with him. Petronella,
22 "Alright."; Jones says, "And I can't
23 get rid of'em. I did all the checking
24 I could get.". Well, we know he didn't
25 check while Petronella was there because

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 you don't hear him checking. Why is
2 the man checking whether he can get
3 rid of food stamps or not if he isn't
4 interested in getting a good deal.
5 He is engaging in conduct which he
6 himself admitted is wrong. So
7 Petronella and he engage in a bargain
8 here. Petronella, "Alright, five hundred
9 for a hundred and a half.". He told
10 you he meant five hundred dollars in
11 food stamps for a hundred and fifty
12 dollars. Jones, "Five hundred for a
13 hundred and a half? Deal.". He was
14 talked into it awfully fast, wasn't
15 he, for a man who didn't want to do
16 it, had no desire to engage in the
17 conduct. He strikes a bargain with
18 the agent, and you can time it if you
19 want by your watch, within the first
20 couple of minutes he's in that store,
21 in that shop. Petronella - Jones
22 says to him, "Fifty dollar books?";
23 Petronella says, "Forty."; Jones says,
24 "Forty-dollar books."? and he counts
25 out the money, "That's four hundred,

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 four eighty, --", and you heard him
2 testify he counts out the books.
3 Jones then says, "A hundred and fifty
4 bucks."; he hands the money over to
5 Petronella and he says, "Good deal."
6 Good deal by guy. Of course it's a
7 good deal, he got three hundred - five
8 hundred dollars in food stamps for a
9 hundred and fifty dollars. He can do
10 what he wants to with them, he can
11 sell them, he can take them to a store.
12 Mr. Wirges said he could cash a dollar's
13 worth of food stamps in for a dollar's
14 worth of food. So he can get five
15 hundred dollars worth of food and it
16 costs him a hundred and fifty dollars
17 and he wants you to believe that he
18 had no desire to do that at all. Mr.
19 Petronella says, "I don't dig you
20 being here with a gun and me with
21 nothin.", he then went on to say,
22 "-- well, I'll have'em for the weekend
23 if you want me to stop back --", I'll
24 have more for you; Jones, does he
25 rebuff him and say lookit, I don't

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 want to do this, get out of my shop,
2 I didn't want you around here;
3 absolutely not;" back with me, all
4 right?" Jones - Petronella, "When?";
5 Jones, "I'll be here tomorrow.", come
6 back again tomorrow we'll do it again,
7 we'll do it again he's telling him.
8 I submit to you that that's a man
9 who wants to deal in food stamps
10 illegally, not a fella that doesn't
11 want anything to do with it. Petronella,
12 "Alright, what time?"; Jones, "Around
13 noon."; Petronella, he says, "Ok.
14 How about later than that, or no?";
15 Jones, "No, I close around three, Ok.";
16 he's setting up a time for him to come
17 back and buy more food stamps; Petronella,
18 "Alright if I come anytime between -
19 ah - twelve and three?"; Jones says,
20 "Ten and three.". It gives him a lot
21 of time to come back, he wants those
22 stamps. Petronella, "Ten and three
23 tomorrow? Ok. That's a hundred and
24 fifty. Ok Ray.", and Ray responds,
25 "Ok, thank you.", and that's it;

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Petronella says thank you and they
2 walk out.

3 Now, according to Mr. Petronella
4 that was the entire conversation. He
5 says that that's what occurred, he
6 recalls it, he doesn't recall the
7 exact words but he recalls that being
8 accurate, he heard the tape, and I
9 submit to you that that is what
10 happened, exactly what happened. Mr.
11 Jones disagrees with us on that point.
12 In any event, according to Petronella,
13 he calls him again the following Monday
14 the 28th and he tells him according
15 to Petronella, "I've got some more
16 stamps.". In fact, Mr. Petronella
17 testified that he tells him he's got
18 a thousand dollars in stamps and he's
19 coming by. According to Mr. Petronella
20 Jones said I don't want a thousand,
21 I only want two hundred dollars worth
22 of stamps. So Petronella goes by
23 with two hundred dollars worth of
24 stamps according to his testimony.
25 You heard Mr. Shortall says he provided

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 those stamps to Mr. Petronella. Again
2 Mr. Petronella tells you what happened.
3 He gives his version, and his version
4 is we had a conversation, I don't
5 recall the exact details but that's
6 what happened, I sold him food stamps.
7 Okay? We do have the tape. Again
8 I tell you rely on that tape, listen
9 to it, because it's very important
10 to this case.

11 What happened on this second
12 occasion? Petronella comes in,
13 "How ya doin. I got'em in the trunk.
14 I don't wanna come in for'em."; Jones
15 says, "Can't do that out here.";
16 Petronella says, "Oh, I don't care,
17 it's just me --"; Jones says, "Damn.";
18 Petronella says, "They're only four
19 here. Ray? I only brought the two
20 of'em. Well that's what you wanted.
21 What did you want?"; and of course
22 Petronella testified that he talked
23 about a thousand dollars in stamps
24 and Jones only wanted two hundred
25 dollars for them. Jones said, "Wanted

1 all of'em."; and I submit to you that
2 you should infer properly that Jones
3 now wishes he had a thousand dollars
4 in stamps. Petronella says, "Oh, ha!",
5 and Jones says, "I wan'ta sell the
6 whole grand for you.", that's what he
7 said to him. The man tells Petronella
8 I want to sell a thousand dollars in
9 food stamps for you and he wants you
10 to believe that he had nothing to do
11 with this thing and would not have
12 done it but for the fact that the
13 agent pressured him into it.

14 MR. COSTA:

Your Honor, I'm going to object
15 to the use of the word pressured again.
16 We're talking about the concept of
17 entrapment and I think any reference
18 to the terminology other than what
19 your Honor will charge on the law in
20 this matter should be refrained by
21 Mr. Wagner.

22 THE COURT:

These are phrases which Mr. Wagner
23 may use and the jury will not take
24 them literally. I will tell the jury
25 exactly what is embraced in the words.

1 MR. WAGNER:

2 Now, Petronella and Jones go on
3 with their conversation. Petronella
4 says, "Yea, but who knew?", implying,
5 I submit to you, that he had been told
6 earlier that Jones only wanted two
7 hundred dollars worth and now he tells
8 him he wants a thousand dollars worth
9 and Petronella says I didn't know that,
10 I would have brought a thousand for
11 you; Jones says, "Huh?"; Petronella
12 says, "How much you got?"; and Jones
13 says again, "I'd a sold the whole
14 grand for you."; he's talking about
15 a thousand dollars in stamps, he
16 actually is asking the agent for more
17 stamps than the agent has; and
18 Petronella responds to him, "I'll
19 have to - ah - come back. How long
20 will you be here?". By the way, in
21 this particular part of the conversa-
22 tion remember Mr. Jones' story that
23 he thought he was being robbed, he
24 was trying to avoid a bad situation.
25 Petronella says I'll have to come
back, how long will you be here; Jones

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 says, "Be here another fifteen twenty
2 minutes. Can you make it back by then?
3 Can ya? Alright what've we got here
4 sixty bucks?"; and Petronella says,
5 "Sixty-five dollars worth.". He told
6 you that that was sixty-five dollars
7 he was charging for the two hundred
8 dollars in stamps. Mr. Jones says,
9 "Sixty-five dollars worth. Alright
10 there's sixty and there's five."; he
11 counts out sixty-five dollars in cash.
12 Mr. Petronella says, "Alright how
13 much money ya got there? What is 't
14 you want?"; and according to the tape,
15 and I submit to you the proper version
16 continues as follows, Mr. Jones says,
17 "Huh?", and Petronella says, "Tell
18 me how much - how much more do you
19 want?"; he asked him do you want
20 stamps how much more; and that's the
21 agent's job, he's an undercover agent,
22 he's out there to find out who's doing
23 illegal conduct, and Jones says, "Well,
24 what do you. Gimme another eight
25 hundred dollars worth. Eight hundred

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

165

1 dollars would be what?". Mr. Jones
2 asked the agent for another eight
3 hundred dollars in food stamps and
4 he's worried about the price and he's
5 asking you to find that he had nothing
6 to do with this, he didn't want to do
7 it, he had no inclination, no predisposi-
8 tion to do this crime at all, and yet
9 the tape, you can hear his voice on
10 there, is asking the agent for eight
11 hundred dollars more in stamps because
12 he got a good price on them. Petronella
13 tells him the price will be, "Two
14 sixty?", and Jones says, "Two fifty.
15 I gave ya sixty-five so that would be
16 a hundred and eighty-five dollars more.
17 Right? You owe me eight hundred dollars
18 more."; he's actually asking the agent
19 to come back with eight hundred
20 dollars in stamps and he wants to
21 give him a hundred and sixty-five
22 dollars. Petronella says, "Alright."
23 Of course, he says that that's his
24 job, that's his role in this investiga-
25 tion. Jones says, "Ok.", and Petronella

Edna J. Pazyynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 says, "Ok Ray.", and he leaves, and
2 that's it according to the tape.
3 I ask you again to listen to that
4 tape if you want to or rely on your
5 recollections or the recollections
6 of the jury as a group. Now, Mr.
7 Petronella testifies that he called
8 Mr. Jones back two more times and he
9 asked him do you want more stamps
10 and he says, according to Mr. Petronella,
11 yes I want more stamps, and they agree
12 on a thousand dollars in stamps. I
13 submit to you that that's important
14 to know what Mr. Jones' intent and
15 knowledge was on those two earlier
16 days. We don't care what his intent
17 and knowledge was on the 8th and 9th
18 of March but you can tell a lot by a
19 person's - their past by what they're
20 doing now, and I submit to you that
21 that's valuable to you, it's not
22 critical but it's valuable to you.
23 And, of course, Mr. Petronella testified
24 that that deal never went down, was
25 never consummated. Now, I asked you

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

167

Instructions to Jury

1 all, you do it as a civic responsibility,
2 you do it because it's your job, but
3 some of us try to avoid it, you didn't,
4 and for that I certainly respect you
5 because you're playing a very important
6 role in the life of a fellow citizen,
7 so for that sense of duty I thank you.
8 When you go back to deliberate after
9 you hear the law, come out with a
10 verdict that the evidence requires,
11 and I assure you Mr. Jones and I will
12 have to live with that verdict and I
13 trust it will be not guilty.

14 Thank you very much. I just hope
15 I haven't bored you.

16 THE COURT:

17 I will try not to be lengthy,
18 ladies and gentlemen. I do urge that
19 you pay attention to what I am saying
20 because you are to apply this as the
21 law in the case when you are deliberat-
22 ing. Now, it has been emphasized that
23 yours is the duty and your duty alone
24 to decide what the facts are and neither
25 of the attorneys has anything to do
with that other than to talk about them

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 as they have been. I have nothing to
2 do with deciding the facts. My sole
3 job is to tell you what the law is.
4 Now, during the trial I decided certain
5 motions, some of which you may have
6 heard or known the result of and others
7 you may not have and, of course, you
8 do know that from time to time I
9 sustained objections to questions which
10 were asked by the attorneys and I
11 refused to let the witness answer and
12 on a couple of occasions I told you
13 that something was stricken from the
14 record and you were to ignore it.
15 Now, you are not to consider any
16 question that was asked that I did
17 not permit to be answered, you are not
18 to consider any of the evidence that
19 I kept out or stricken from the case
20 because that is no part of the evidence.
21 Also you are not to read into anything
22 that I have said or any ruling I have
23 made on any objection, any inference
24 that I have anything in my mind about
25 how you should decide any of the facts

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 in the case or whether or not you
2 should find Mr. Jones guilty. And
3 even if you think that somewhere lurking
4 in some one of those indications
5 on my part there is such a feeling by
6 me, and I assure you as far as I can
7 look inwardly and evaluate myself there
8 is no such feeling but if you think
9 there is I tell you that you are to
10 ignore it and yours is to be the
11 determination on all of the facts
12 following these rules of law and
13 decide whether or not Mr. Jones is
14 guilty or innocent. You will be
15 returning two verdicts because there
16 are two counts and you will have to
17 treat each of those counts separately
18 even though the type of crime that is
19 alleged in each one is exactly the
20 same but you do have to weigh Count I,
21 which I will read to you, and weigh
22 Count II and decide whether Mr. Jones
23 is guilty or not guilty as to each
24 one. Your verdict as to guilt or
25 innocence on one count is not to be

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 determinative of your decision on
2 the other count.

3 Mr. Jones is charged in this
4 indictment in these two separate
5 counts with having violated a parti-
6 cular section of one part of the
7 United States Code, particularly
8 Section 2023(b) of Title 7. You
9 don't have to worry about that, I
10 will tell you what that law is,
11 but that particularly is what he is
12 charged with in each count. He is
13 charged with having knowingly acquired
14 and possessed food stamps, and you
15 will find that in the text of the
16 indictment, I will deal with that
17 possession aspect a little bit
18 later, having acquired and possessed
19 food stamp coupons having a value in
20 excess of one hundred dollars in a
21 manner not authorized by Chapter
22 51 of Title 7 of United States Code
23 or by the regulations which have been
24 issued thereunder, and each of the
25 counts deals with a violation of that

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 same statute and the only difference
2 is to the date involved and the
3 amount of the food stamp coupons involved.
4 You will have a copy of the indictment
5 with you in the jury room so you can
6 refer to those two counts. As I say,
7 you will deal with each count separately.

8 Now, Count I says that on or
9 about the 25th day of February 1977
10 in the Western District of New York,
11 and that is an area of seventeen counties
12 in this end of New York State and it
13 includes Erie County, that Ray Jones
14 knowingly did acquire and possess food
15 stamp coupons having a value in excess
16 of one hundred dollars in a manner not
17 authorized by Chapter 51 of Title 7
18 of United States Code or the regulations
19 issued pursuant thereto in that Ray
20 Jones did purchase from Joseph Petronella,
21 Detective, Erie County Sheriffs' Depart-
22 ment, food stamp coupons with an
23 aggregate face value of five hundred
24 dollars and gave in exchange one hundred
25 and fifty dollars United States currency

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 all in violation of Title 7, United
2 States Code, Section 2023(b). And
3 Count II as I say paralleling that,
4 the allegation is that the event
5 occurred on or about February 28th
6 1977, again in the Western District
7 of New York, and he is charged with
8 knowingly having acquired and possessed
9 food stamp coupons having a value in
10 excess of one hundred dollars and in
11 a manner not authorized by that same
12 part of the law that I referred to
13 in Count I or by regulations in that
14 he did purchase again from Joseph
15 Petronella food stamp coupons with an
16 aggregate face value of two hundred
17 dollars and gave in exchange sixty-
18 five dollars in United States currency,
19 again in violation of that same section
20 of the Code.

21 Now, it has been emphasized to you
22 and I emphasize to you again that the
23 indictment is only a formal method that
24 we use in our courts to accuse a
25 defendant of a crime. It is not evidence

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 of any crime against the defendant
2 and you are not to consider it as
3 any indication of his criminality,
4 it merely tells him and you what he
5 is charged with.

6 Now, Defendant is guilty of this
7 crime if other elements being proven,
8 and I will tell you what those elements
9 are, he acquired or possessed the
10 food stamps, however, there is not in
11 the Government's proof or elsewhere
12 in the total evidence that is before
13 you in this case anything relating to
14 the Defendant's possession of the
15 stamps separate and apart from his
16 alleged acquisition of them, and
17 consequently you are not to concern
18 yourself with any other aspect of
19 possession or with possession in
20 and by themselves. If you find that
21 he acquired them you will of necessity
22 have found that he had at least that
23 momentary possession but acquisition
24 is what you will be dealing with and
25 you can ignore the allegation of the

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 charge of possessing. The particular
2 section that I had talked about,
3 Section 2023(b) says in pertinent part
4 whoever knowingly acquires coupons in
5 any manner not authorized by this
6 chapter or the regulation issued
7 pursuant to this chapter shall if such
8 coupons have the value of one hundred
9 dollars or more be guilty of an offense
10 against the laws of the United States.
11 The chapter referred to there is the
12 Chapter 51 that is referred to in the
13 two counts of the indictment.

14 Now, there are basically four
15 essential elements, each of which
16 has to be proven by the Government
17 beyond a reasonable doubt, and that
18 beyond a reasonable doubt is a phrase
19 that I will define for you a little
20 bit later, and you will find that I
21 am using it from time to time. Each
22 element has to be proven beyond a
23 reasonable doubt in order to establish
24 the offense which is charged in each
25 of these counts of the indictment.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 Now, the first element is that the
2 Defendant Mr. Jones acquired food
3 stamp coupons as is charged in the
4 indictment. And, secondly, that he
5 acquired such coupons in a manner
6 not authorized by the Food Stamp Act
7 of 1964 as amended and the regulations
8 thereunder. And thirdly, that such
9 coupons were of the value of a hundred
10 dollars or more. And fourthly, that
11 the Defendant did these acts or act -
12 did such act or acts, rather, knowingly.
13 Now, you keep in mind that the burden
14 is always on the Government, the
15 prosecution, to prove beyond a reason-
16 able doubt each essential element of
17 the crime charged in each count of the
18 indictment, that the law never imposes
19 upon the Defendant Mr. Jones the
20 burden or duty of calling any witnesses
21 or producing any evidence. He has, as
22 you know, taken the witness stand
23 himself and has produced other evidence
24 but nevertheless the basic rule obtains.
25 There is in this case a fifth element

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 which must be proven and that namely
2 is that the Defendant was not entrapped
3 into the commission of the crime. The
4 Government can accomplish this showing
5 by placing before you evidence which
6 satisfies you beyond a reasonable
7 doubt either that the Government
8 Agents, which includes here the officers
9 of the Erie County Sheriffs Department,
10 did not cause the Defendant to violate
11 this law or that the Defendant was
12 willing and predisposed to violate
13 the law. Now, an act or a failure to
14 act - an act really in this case is
15 all we are dealing with, not a failure
16 to act, an act is knowingly done if
17 it's done voluntarily and intentionally
18 and not because of mistake or accident
19 or other innocent reason, and the
20 purpose of including the word knowing
21 or knowingly was to insure that no
22 one would be convicted of a crime
23 because of an act which is done pursuant
24 to some mistake or accident or other
25 innocent reason. The Food Stamp Act

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 of 1964 as amended provides in pertinent
2 part that coupons shall be issued only
3 to households which have been duly
4 certified as eligible to participate
5 in the Food Stamp Program, and I tell
6 you that under the law food stamps
7 such as we have had evidence of are
8 coupons within the meaning of that
9 statute, further the State agency
10 of each participating State shall
11 assume responsibility for the certifi-
12 cation of applicant household and for
13 the issuance of coupons. The regula-
14 tions of the United States Department
15 of Agriculture under this statute
16 provide the State agency shall provide
17 for certification of households by
18 completion of the application for
19 participation. The Act itself further
20 provides that coupons issued to eligible
21 households shall be used by them only
22 to purchase food in retail food stores
23 which have been approved for participa-
24 tion in the Food Stamp Program at
25 prices prevailing in such stores. The

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 term household is defined to mean a
2 group of related individuals living as
3 one economic unit sharing common cook-
4 ing facilities and for whom food is
5 customarily purchased in common or a
6 single individual living alone who has
7 cooking facilities and purchases and
8 prepares food for home consumption.
9 And again, to wind up the definition
10 of terms for you, the term coupon vendor
11 means any person, partnership, corpora-
12 tion, organization political subdivision
13 or other entity with which a State
14 agency has contracted for or to which
15 it has delegated administrative responsi-
16 bility in connection with the issuance
17 of coupons to households. If you find
18 beyond a reasonable doubt that the
19 Defendant acquired these food stamp
20 coupons without being duly certified
21 as eligible for such coupons upon
22 completion of an application for
23 participation or that the Defendant
24 acquired these food stamp coupons
25 from someone other than the State

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

180

1 agency or a coupon vendor delegated
2 by the State agency to issue the
3 coupons then you may find the element
4 of acquiring such coupons in a manner
5 not authorized by the Act or by the
6 regulations.

7 Now, I have mentioned as one
8 element the finding by you of a value
9 of food stamps in excess of one hundred
10 dollars. There is in this circumstance
11 a separate crime, what we call a lesser
12 included crime that if you find that
13 the stamps did not have a value in
14 excess of one hundred dollars. Now,
15 the law permits you to find the
16 Defendant guilty of any such lesser
17 offense which is necessarily included
18 in the offense which is charged in the
19 indictment and whenever such a course
20 is consistent with the facts found by
21 you from the evidence in the case and
22 with the law that I am giving to you.
23 So if you should unanimously find the
24 Defendant not guilty of the crimes
25 charged in the indictment then if that

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 result is reached because of the dollar
2 value involved you must separately
3 proceed to determine his guilt or
4 innocence of the lesser offense, namely
5 whether or not he has been guilty of
6 dealing in food stamps in an illegal
7 manner in and about which is not in
8 excess of one hundred dollars. Now,
9 the offense which is charged in each
10 count of the indictment, that is
11 acquiring the food stamp coupons having
12 a value of one hundred dollars or more,
13 and I think that I must - I think in
14 my statement before I said having a
15 value in excess of one hundred dollars,
16 actually if you find it a value of one
17 hundred dollars or more that would
18 satisfy the indictment, the lesser
19 included offense would be for a value
20 of less than one hundred dollars. Now,
21 if you find that he acquired food
22 stamp coupons with a value of one
23 hundred dollars or more in any manner
24 not authorized by the Food Stamp Act
25 or the regulations that offense necessarily

Edna J. Parzynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 includes the lesser offense of the
2 same acts or the same intent, the same
3 other elements but involving food
4 stamp coupons with a value of less
5 than a hundred, so when you're determin-
6 ing criminality in this case and coming
7 to the element of value you would
8 decide whether the stamps involved
9 has a value of a hundred dollars or
10 more or has the value of less than one
11 hundred dollars and your verdicts would
12 report that to me.

13 Now, the Defendant Mr. Jones
14 asserts and his counsel Mr. Costa has
15 been frank enough with you of indicating
16 that in his mind that this is the sole
17 issue you have to decide or the main
18 issue, he says that he was a victim of
19 entrapment as to the offense which is
20 charged in each of these counts. Now,
21 if you find some evidence of Government
22 initiation of the Defendant's conduct
23 then you must further find that the
24 Government - find whether the Government
25 has proven beyond a reasonable doubt

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 that the Defendant was ready and willing
2 to commit the crimes charge in each
3 count of the indictment. I have
4 included that as a fifth element of
5 what you must find in each count if
6 you are to find guilt and tell you
7 that you must determine that issue
8 of entrapment. You must determine
9 whether the Government has proven
10 beyond a reasonable doubt that
11 entrapment was not present. Now,
12 where Defendant has no previous
13 intent or purpose to violate the law
14 but is induced or persuaded, not forced
15 or pressured or invited, but induced
16 or persuaded by law enforcement officers
17 or their agents to commit a crime he
18 is a victim of entrapment and the law
19 forbids his conviction in such case.
20 Now, on the other hand, where the
21 Defendant already has the readiness
22 and the willingness to break the law
23 the mere fact that Government agents
24 provide what appears to be a favorable
25 opportunity is not entrapment. Now,

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 there's been evidence of Defendant's
2 character, good character, and you
3 can give to that evidence whatever
4 weight you think it should have in
5 your deciding whether or not the
6 Defendant was ready and willing. Now,
7 if you find that the Government has
8 proved beyond a reasonable doubt from
9 the evidence in the case that before
10 anything at all occurred respecting
11 the alleged defenses involved in this
12 case that the Defendant Ray Jones was
13 ready and willing to commit the crimes
14 which are charged whenever the opportunity
15 was afforded and that the Government
16 officers and agents did no more than
17 offer the opportunity then you will
18 find that the Defendant was not a
19 victim of entrapment. Now, on the other
20 hand if the evidence presented by the
21 Government in this case leaves you
22 with a reasonable doubt whether the
23 Defendant had the previous intent or
24 purpose or as we call it sometimes
25 predisposition to commit the offenses

Edna J. Paczynski

OFFICIAL REPORTER, U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 charged in the indictment apart from
2 the inducement or persuasion of some
3 officer or agent of the Government
4 then you would find the Defendant
5 not guilty. You are not to consider
6 the telephone conversations of March
7 8th and March 9th between Detective
8 Petronella and the Defendant if you
9 believe that they occurred, and of
10 course there is conflicting evidence
11 as to that, as any proof of the
12 Defendant's readiness and willingness
13 to acquire food stamps illegally on
14 February 25 or February 28. You must
15 resolve the issue of entrapment separately
16 as to the February 25 transaction and
17 as to the February 28 transaction.
18 Obviously there is a factual relation-
19 ship between the two events. If you
20 find that the Government has failed to
21 prove beyond a reasonable doubt that
22 there was no entrapment on February
23 25 you can if you want infer such
24 failure as to the February 28 event.
25 You might, on the other hand, infer

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 that the Defendant's involvement on
2 February 25 even if entrapped shows
3 his disposition and willingness to
4 violate the law on February 28. Now,
5 there are certain rules of law which
6 are common to all criminal cases.
7 I have mentioned some. You must
8 apply these in reviewing the evidence
9 which you have before you. The basic
10 rule in all criminal cases is that the
11 Defendant is presumed to be innocent
12 and that presumption of innocence
13 remains with the Defendant throughout
14 this trial and it continues to exist
15 until such time as each of you is
16 convinced beyond a reasonable doubt
17 by legal and competent evidence that
18 the Defendant is guilty of the offense
19 or offenses charged. The burden of
20 proof that a person is guilty beyond
21 a reasonable doubt rests with the
22 Government at all times and never shifts
23 to the Defendant. In order to sustain
24 its burden the Government must present
25 proof which is sufficiently strong to

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 convince each of you of the Defendant's
2 guilt beyond a reasonable doubt. Now,
3 the requirements that the prosecution
4 prove Defendant's guilt beyond a
5 reasonable doubt extends to every
6 essential element of the crime or
7 crimes with which he has been charged.
8 However, in determining whether the
9 guilt of the Defendant as to each and
10 every element has been established
11 beyond a reasonable doubt you are not
12 limited to the proof of the Government's
13 witnesses. If you are satisfied from
14 a review of all of the evidence in the
15 case, both the Government's and the
16 Defendant's, that the evidence as to
17 a particular count establishes guilt
18 beyond a reasonable doubt then you may
19 convict the Defendant on that count.
20 On the other hand, if you have a reason-
21 able doubt at any point with respect to
22 a particular count under consideration
23 then you must acquit the Defendant on
24 that count. I tell you again that you
25 will separately weigh and determine the

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 evidence as to each count, you have to
2 determine the Defendant's guilt or
3 innocence as to each count of the
4 indictment separately.

5 I mentioned reasonable doubt and
6 I promised to define it. A reasonable
7 doubt is a doubt which is based upon
8 reason and common sense and which arises
9 from the state of the evidence. Now,
10 of course, it's rarely possible to
11 prove anything to an absolute certainty
12 so proof beyond a reasonable doubt is
13 established if the evidence is such
14 as you would be willing to rely upon
15 and to act upon in the most important
16 of your own affairs. A Defendant is
17 not to be convicted upon mere suspicion
18 or upon conjecture. A reasonable doubt
19 can arise not only from the evidence
20 produced but it can also arise from the
21 lack of evidence. The burden is upon
22 the prosecution to prove beyond a
23 reasonable doubt that the Defendant
24 is guilty of every essential element
25 of each crime and the Defendant has the

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 right to rely upon any failure of the
2 prosecution to establish such proof.
3 Now, in this sense you really will not
4 be determining Defendant's innocence
5 but you really will be determining
6 whether or not the Government has proven
7 beyond a reasonable doubt that he is
8 guilty. Defendant may also rely upon
9 the evidence which was brought out
10 upon cross examination of the witnesses
11 for the prosecution just as the Govern-
12 ment can rely upon evidence brought
13 about on cross examination of the
14 defense witnesses. I emphasize again
15 the law does not impose upon Defendant
16 the burden or duty of producing any
17 evidence and even though he has taken
18 the stand and has put in some evidence
19 you have to determine basically whether
20 the Government has carried its burden
21 of proving each element beyond a
22 reasonable doubt. Remember, however,
23 a reasonable doubt is such a doubt as
24 based upon reason and as appeals to
25 your power of logic. It's a doubt which

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 arises out of something tangible in
2 the evidence in the case or something
3 lacking in the case, and you have to
4 distinguish it from a doubt which might
5 be based upon some emotion such as upon
6 a whim or upon a fancy. It's a doubt
7 for which you have a reason. Sometimes
8 people are not able to put into words
9 those reasons and that is not determina-
10 tive of whether or not you have a reason
11 but in your mind you must have a tangi-
12 ble - a reason that arises from something
13 that is tangible in the evidence or
14 something that is left out of the
15 evidence. Now, if you feel uncertain
16 and you are not fully convinced that
17 the Defendant is guilty of the crime
18 charged and if you believe that you are
19 acting in a reasonable manner and you
20 believe that a reasonable man or woman
21 in any manner of like importance would
22 hesitate to convict because of a doubt
23 that you have that is a reasonable
24 doubt and Defendant is entitled to
25 its benefit. If you have such a doubt

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 you must acquit, you must find Ray
2 Jones not guilty. Now, reasonable
3 doubt in your mind as to any essential
4 element of either crime entitles the
5 Defendant to acquittal of that crime.
6 Now, this does not mean that the
7 Government must prove every essential
8 element of the crime beyond a reasonable
9 doubt and it does not mean that - excuse
10 me - let me restate that. That was a
11 misstatement. The rule is, of course,
12 the Government must prove every
13 essential element beyond a reasonable
14 doubt, I re-emphasize that, but that
15 rule does not mean that you have to
16 believe the testimony of every Govern-
17 ment witness as being true beyond a
18 reasonable doubt or that every piece
19 of evidence that the Government has
20 offered is true beyond a reasonable
21 doubt. It only means that the credible
22 evidence as weighed and found by you
23 under these instructions and viewed as
24 a whole must establish every essential
25 element of the crime and the Defendant's

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 guilt beyond a reasonable doubt. Now,
2 as the sole judges of the facts you
3 have to determine which of the witnesses
4 you believe, what portion of their
5 testimony you accept, and what weight
6 you attach to it. Now, as I mentioned
7 before that I sustained objections to
8 questions about permitting answers
9 and sometimes I struck testimony and
10 you are not to draw any inference from
11 an unanswered question and you cannot
12 consider testimony which has been
13 stricken. Your decision has to be
14 made solely upon the competent evidence
15 before you and what I have kept out
16 or stricken is not before you.

17 Now, there are two types of
18 evidence generally which you can consider
19 in deciding whether the Government has
20 proven Defendant guilty and some of
21 this proof consists of the testimony
22 of those who have witnessed the Defen-
23 dant's conduct or heard his statement
24 and have testified to that conduct or
25 statement in the course of trial and

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 this is what we call direct evidence
2 or eyewitness evidence. On the other
3 hand, the proof of the chain of circum-
4 stances may point to the commission of
5 an offense by the Defendant and this
6 we would call circumstantial evidence.
7 You are entitled to consider and find
8 that both types of evidence, direct
9 and circumstantial, bear on the question
10 of innocence or guilt of the Defendant.
11 As a general rule the law makes no
12 distinction between direct and circum-
13 stantial evidence but simply requires
14 that before convicting the Defendant
15 you be satisfied of his guilt beyond a
16 reasonable doubt. I mentioned that
17 there was evidence of character in
18 the case and where a Defendant has
19 offered evidence of good general repu-
20 tation for truth and veracity or honesty
21 and integrity you should consider such
22 evidence along with all the other
23 evidence in the case. Evidence of a
24 Defendant's reputation inconsistent
25 with those traits of character

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 ordinarily involved in the commission
2 of a crime charged may give rise to a
3 reasonable doubt because you may think
4 it improbable that a person of good
5 character in respect to those traits
6 would commit such a crime. However,
7 whether or not you do so construe or
8 interpret it is completely up to you.
9 We have had tape recordings, two tape
10 recordings of conversations put in
11 evidence. These tape recordings have
12 been identified by witnesses and trans-
13 cripts have been furnished for your
14 guidance as you listen to the tapes
15 and to help you identify the respective
16 speakers. The tapes themselves,
17 however, are the evidence in the case
18 and the transcripts themselves are not
19 evidence. If you perceived any varia-
20 tion between what you heard on the
21 tapes and what you saw on the transcripts
22 you are to rely solely upon what you
23 heard on the tapes and you are to
24 disregard what you saw on the trans-
25 cripts. Now, while you will have the

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 other exhibits with you in the jury
2 room for your reference you will not
3 have the tapes there because you will
4 not have in the jury room any facility
5 for playing them and you will not have
6 the transcripts because they are not
7 in evidence. If you want to refer to
8 either tape or find out again what is
9 on either one we will arrange to replay
10 it or them for you. Now, you are permitted
11 to draw from one fact, the existence of
12 another if reason and experience support
13 the inference, that is to say you can
14 draw from facts which you find to have
15 been proven by the evidence as such
16 reasonable inferences as seem justified
17 by reason and logic in light of your own
18 experiences in life. Now, basically
19 an inference is nothing more than a
20 deduction or conclusion which reason
21 and common sense leave you to draw from
22 the facts which have been proven. Any
23 inference which you draw must reasonably
24 flow from the evidence and it must be
25 based upon facts established by the

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

196

1 evidence. And because a permissible
2 inference in law must flow naturally
3 and logically from and be based upon
4 facts established by the evidence it
5 follows that you may not base further
6 inferences merely on inferences already
7 drawn. One inference cannot be based
8 upon or drawn from another inference,
9 it must be based upon and drawn from
10 facts proved by the evidence. Now,
11 if in the course of your deliberation
12 your consideration of all of the
13 evidence you find that certain evidence
14 admits or lends itself to two inferences,
15 one of which supports innocence of the
16 Defendant and the other which supports
17 guilt of the Defendant, you must accept
18 the inference supporting innocence and
19 you must reject the inference supporting
20 guilt. So there must be intent on the
21 part of the Defendant. Intent is the
22 purpose or aim or state of mind with
23 which a person acts in this case or
24 in other cases fails to act. An act
25 is knowingly done if it is done voluntarily

Edna J. PaczynskiOFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 and intentionally and not because of
2 mistake or accident or other innocent
3 reason. An intent you would recognize
4 may and probably must be proved by
5 indirect or circumstantial evidence
6 because while witnesses may see and
7 hear or may be so be able to give
8 direct or eyewitness evidence of what
9 a person does or says there can be,
10 of course, no eyewitness account of
11 the state of mind in which the acts
12 were done or the statements made.
13 But what a person does or says may
14 indicate either intent or lack of
15 intent to act. Now, unless otherwise
16 instructed in determining any issue
17 involving intent you may consider all
18 of the facts and circumstances in the
19 case which aid you to determine state
20 of mind. Again, I refer to the testimony
21 concerning the telephone conversations
22 allegedly had between Detective Petronella
23 and the Defendant on March 8 and March
24 9 and admonish you again, of course,
25 it is up to you to believe whether they

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 occurred and what the content was, but
2 that testimony bears only upon the
3 issues of the Defendant's intent on
4 February 25 and/or February 28, his
5 knowledge as of those earlier dates
6 and his motives as of either or both
7 of those dates and you cannot consider
8 those telephone calls in deciding
9 whether on those dates the Defendant
10 had a disposition or willingness to
11 commit the criminal acts.

12 Now, another important thing
13 you must do as jurors is to decide
14 the credibility, the believability
15 of witnesses and the weight their
16 testimony deserves. Again, you are
17 the sole judges as to credibility and
18 as to weight. You should carefully
19 scrutinize the testimony which is
20 given and the circumstances under which
21 each witness has testified and every
22 other matter in evidence which tends
23 to indicate whether or not the witnesses
24 are worthy of belief. The witness in
25 the course of his testimony may have

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 acknowledged a criminal record or admitted
2 other unlawful or reprehensible conduct
3 or activities, admitted lying in the
4 past, and so forth, and naturally you
5 would cautiously and carefully weigh
6 all of such facts and circumstances
7 to determine the effect, if any, that
8 those facts and circumstances may have
9 upon that witness's believability.
10 Now, similarly you may consider any
11 bias or prejudice demonstrated by a
12 witness or - I think we had none of
13 this here but sometimes there is a
14 demonstrated hope of leniency or
15 reward to be gained through testifying,
16 Mr. Costa made some implication in
17 that direction as to one witness. Now,
18 this is not to say that because a given
19 witness may be a rather unsavory
20 character in some respects that you
21 may not credit his testimony on the
22 stand. You have to judge each witness's
23 intelligence and motive and state of
24 mind and his demeanor and manner while
25 on the stand and also have in mind the

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 relation that each witness may bear
2 to either side of the case and the
3 manner in which each witness may be
4 affected by the verdict and the
5 extent to which, if at all, each
6 witness is either supported or contra-
7 dicted by other evidence. Now, the
8 mere fact that the testimony of a
9 witness is inconsistent or that there
10 are discrepancies in the testimony
11 does not mean that you have to reject
12 the witness's credibility and you must
13 determine whether the inconsistency or
14 discrepancy is the result of falsifica-
15 tion or whether on the other hand it
16 is a result of innocent miscalculation
17 or inaccurate observation or memory.
18 In evaluating credibility you will,
19 of course, determine whether or not
20 the testimony of a given witness is
21 inherently improbable or contradictory
22 with respect to any material fact as
23 judged by other evidence in the case.
24 We had police officers, deputy sheriffs
25 on the witness stand and the testimony

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 of such a person should be weighed
2 the same as that of any other witness
3 and their testimony does not deserve
4 either greater or lesser believability
5 simply because it comes from a police
6 officer. You have to judge such testi-
7 mony the same as you would the testimony
8 of other witnesses. Now, if you do find
9 that a witness has testified falsely
10 or has lied with respect to any material
11 portion of his testimony, his or her
12 testimony, you may disregard that
13 portion which you find to be unbeliev-
14 able and rely upon that which you find
15 to be believable or you may if you want
16 disregard the entire testimony of that
17 witness. Now, in that connection a
18 witness does not testify falsely or
19 lie if he or she testifies incorrectly
20 or in error merely by reason of inad-
21 vertence or misrecollection or mistake
22 or other innocent reason. Now, you
23 are instructed as a matter of law that
24 you are not to be influenced by the
25 fact that the Government of the United

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 States is a party to this action.
2 The Government is the prosecutor, Mr.
3 Wagner is the prosecuting attorney.
4 I tell you also that it is your duty
5 merely to determine whether the
6 Government has proven the Defendant
7 guilty. You are not to concern your-
8 self in any way with the punishment
9 that he may receive if he is convicted.
10 Punishment is a matter which only I
11 should be concerned and, of course,
12 I would only be concerned if you do
13 convict the Defendant of one or more
14 of the crimes of which he is charged.

15 Again I stress that only you are
16 to find the facts, any factual indica-
17 tion or examples that I have given are
18 not meant to and should not be taken
19 to indicate any opinion on my part as
20 to how you should find on any issue
21 of fact or whether you should acquit
22 or convict the Defendant. These are
23 matters solely for you.

24 I remind you as we began this
25 case you took an oath that you would

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 well and truly try the issues which
2 are joined in the case and a true
3 verdict given according to the evidence
4 so help you God. I suggest to you
5 that if you follow that oath and you
6 try the issues without combining your
7 thinking with any emotion that you will
8 arrive at a true and just verdict.

9 But it must be clear to you that once
10 you get into an emotional state and
11 you let bias or sympathy or prejudice
12 interfere with your thinking that you
13 will not arrive at a true and just
14 verdict. As you deliberate, ladies
15 and gentlemen, please be careful to
16 listen to the opinions of the other
17 jurors and ask for an opportunity to
18 express your own views, and no one
19 juror holds the center stage in the
20 jury room and no one juror controls
21 or monopolizes the conversations and
22 deliberations. Now, after you have
23 listened to the other jurors and after
24 stating your own views you become con-
25 vinced that your view is wrong don't

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

204

hesitate because of stubbornness or pride or opinion to change your view but, on the other hand, do not surrender your honest conviction merely because you are outnumbered. Your verdict must be unanimous, it must represent the absolute conviction of each one of you and, of course, I refer to your verdict on each of the two counts. Your verdict as to guilt or innocence which as I have said means actually not proven guilty of the Defendant on each count of the indictment has to be reached unanimously with all twelve of you agreeing on the result. You will have a copy of the indictment in the jury room. I have marked this Court Exhibit A, and don't give it any particular standing or credance just because it is a Court Exhibit, it is no evidence at all, it doesn't mean anything, it doesn't prove anything, it merely frames for you as it did for Mr. Jones the charges which he has. Now, as you reach the jury room and commence your

Edna J. PaczynskiOFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 deliberations as the first order of
2 business you should select one of your
3 number to speak for you. When you come
4 into the court room or when you have
5 to get in touch with me and any communi-
6 cation from the room will be by a
7 note which you will write out and hand
8 to the Deputy Marshall who will be on
9 duty outside the jury room. Don't ask
10 the Deputy Marshall anything about your
11 duties. If you have any question at
12 all write out a note and have it sent
13 to me. You can ask me questions, you
14 can request a clarification of my
15 instructions on the law or a reading
16 of my instructions or all or part of
17 the testimony of any witness or a
18 replaying of a tape or tapes. Use the
19 note also to tell me when you have
20 reached your verdicts or in appropriate
21 circumstances where you find yourself
22 so deadlocked that you are unable to
23 reach unanimity. Never tell me or
24 anyone else in a note or otherwise
25 how your voting stands at anytime except

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

206

Exceptions to Instructions to Jury

1 when you finally do return a verdict
2 and then, of course, you would be
3 unanimously stating one way or the
4 other the guilt or innocence of the
5 Defendant as to each count.

6 Now, gentlemen, are there any
7 exceptions or requests and if so do
8 you wish to be heard outside the
9 presence of the jury?

10 MR. COSTA: I do, your Honor. I would like
11 to be heard outside the presence of
12 the jury.

13 THE COURT: Mr. Wagner.

14 MR. WAGNER: I have nothing, your Honor.

15 THE COURT: Again, I will just ask you to
16 step briefly in the hallway.

17
18 (Jury escorted from the court
19 room.)

20
21 THE COURT: Yes, Mr. Costa.

22 MR. COSTA: I have no exceptions, your Honor.
23 I do have some further requests to
24 charge that the elements of entrapment
25 occur that when the original criminal

1 conduct is a product of the creative
2 activity of the law enforcement officials,
3 that is when the criminal plan originates
4 in the mind of the Government Agents
5 and not in the mind of the accused, I
6 would ask that you charge that.

7 THE COURT:

All right. I will refuse that.
8 You may have an exception.

9 MR. COSTA:

I will also ask your Honor to
10 charge that the issue of entrapment
11 having been presented the burden falls
12 on the prosecution to prove beyond a
13 reasonable doubt that reasonable grounds
14 existed for believing the accused was
15 engaged in the particular unlawful
16 activity charged.

17 THE COURT:

I refuse that, and you may have
18 an exception.

19 MR. COSTA:

Thank you, your Honor.

I will also ask your Honor to
20 charge that if you find that the
21 original sale was a product of the
22 creative activity of the law enforcement
23 officials you may also find that the
24 subsequent purchase was not an independent
25

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

act but rather the course of conduct
flowing from the original inducement.

THE COURT:

I have dealt with that in a
fashion that points out to the jury
that they may so construe it but they
need not so I refuse, I will refuse
yours which sort of says it must flow.

MR. COSTA:

Yes, I understand, your Honor.
I am just pointing out to you how I
felt there might be some additional
instruction in that area.

THE COURT:

Absolutely. I understand.

MR. COSTA:

I also ask your Honor to charge
that if the informant's testimony
would tend to disprove the Defendant's
version of the facts it is the
responsibility of the Government to
produce the informant to testify in
the Government's behalf and that the
Defendant --

THE COURT:

I did not deal with that. I
said in advance I might put something
in bearing upon that depending upon
your respective arguments. I found
nothing in either argument that

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 necessitated putting it in and, of
2 course, there is in the case no proof
3 that Mr. Riley is anymore available to
4 the Government than he is to the
5 defense and as a consequence absent
6 anything --

7 MR. COSTA:

Your Honor, --

8 THE COURT:

-- absent anything in the argument
9 I would not do it.

10
11 MR. COSTA:

Now, what were you going to say?
I felt that your Honor said that
12 the informant was no more available
13 to the Government than to the defense?

14 THE COURT:

That is right.

15 MR. COSTA:

Well, I think the record is clear
16 and the testimony that has been adduced
17 and elicited from the witnesses that
18 the informant would not discuss the
19 case with me, the representative of
20 the Defendant, that he was the informant
21 who was present at the scene of the
22 initial act of commission, that he was
23 part of the inducing pattern which was
24 promulgated by the plan developed by
25 Mr. Shortall and Mr. Petronella and that

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 he was part of the Government activity
2 and as such he was the Government's
3 witness and he was part of the Govern-
4 ment's case and never was part of the
5 Defendant's case because not only of
6 those factors but because we never
7 had a proper defense opportunity to
8 obtain, in affect, even like in a civil
9 trial the depositions, there is no way
10 in the world that I could in discharge
11 of my counsel responsibility under the
12 Sixth Amendment and also under this
13 particular factual concept call him to
14 the stand.

15 MR. COHEN:

Your Honor, --

16 THE COURT:

17 Well, we recognized, I think on
18 the record, the practical consideration
19 which you face and I think I even said
20 I did not know how myself would react
21 if I were in your position, nevertheless,
22 there is an assumption in the law and
23 on my part that if Mr. Riley were
24 called to the witness stand even by
25 the defense that his answers which, of
course, would be compelled would be not

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 other than truthful.

2 MR. COSTA:

Well, your Honor, there is no
3 evidence in this case that his testimony
4 would be cumulative.

5 THE COURT:

I did not say that it would be.

6 MR. COSTA:

No. But I am saying I'm pointing
7 this out, your Honor, --

8 THE COURT:

Not cumulative but also not
9 necessary.

10 MR. COSTA:

Yes, but, your Honor, if in
11 respect to the question of the proof
12 and the responsibility of the Government
13 to prove beyond a reasonable doubt
14 that we were not entrapped, I think it
15 was essential and the obligation of
16 the Government to put Mr. Riley on the
17 stand. Now, I tried in my summation
18 to stay away from inferring any mis-
19 conduct or lack of activity on the
20 part of the Government. It was not
21 the thrust of my summation.

22 THE COURT:

I know you did. You took one
23 tentative step up the steps and pulled
24 your foot back.

25 MR. COSTA:

Well, I didn't want to cause any --

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 THE COURT:

I know.

2 MR. COSTA:

I didn't want to cause any ground
3 for mistrial or improper summation.
4 But the part I'm talking about in the
5 presence of the jury.

6 THE COURT:

I understood.

7 MR. COSTA:

But I think in my legal position
8 to you, your Honor, I think the proof
9 clearly demonstrates that aspect of
10 our position.

11 THE COURT:

Again, I am refusing, and you
12 have an exception.

13 MR. COSTA:

Thank you, your Honor.

14

15

16

17

18

19

20

21

22

23 THE COURT:

Read that back to me, please.

24

MR. COSTA:

I'll read it again.

25

THE COURT:

No. She has it.

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 MR. COSTA:

I'm sorry, your Honor.

2
3 (Last statement by Mr. Costa
4 read.)

5
6 THE COURT:

No. I refuse it.

7 MR. COSTA:

Note my exception, your Honor.

8 Your Honor, I also ask you to
9 charge the evidence of the Defendant's
10 willingness to participate in a criminal
11 activity by itself is insufficient to
12 overcome the defense of entrapment.

13 THE COURT:

14 The rest of them, of course, I
15 was going to say that the run of my
16 refusals of your requests is really
17 based upon the fact that they have
18 been priorly been presented to me and
19 I priorly put them aside. Now, this
20 one is slightly different. I can't
21 see any basis in the law for saying
22 other than that willingness is another
23 word or means for expressing predisposi-
24 tion to the criminal act and, of
25 course, predisposition to engage in a
criminal act negates the defense of

1 entrapment so I will deny it.

2 MR. COSTA: Well, it is our position that this
3 is just one of the elements in the
4 totality of the prerequisite to go
5 into the concept of entrapment. Not
6 only is it willingness but you have
7 got to show predisposition --

8 THE COURT: I am saying --

9 MR. COSTA: And prior criminal activity.

10 THE COURT: I can't in my mind see a substantial
11 difference, if any difference, between
12 willingness and predisposition to
13 commit.

14 MR. COSTA: All right. I respectfully except,
15 your Honor.

16 I also ask your Honor to charge
17 where the undisputed evidence shows
18 that the Government supplied the
19 contraband, the receipt of which is
20 illegal, constitutes entrapment as a
21 matter of law and that the Government
22 cannot be permitted to punish the
23 person receiving it.

24 THE COURT: Well, I refuse that. I considered
25 that same one.

1 MR. COSTA:

And I also ask your Honor to
2 charge that the Government's misconduct -
3 that Government misconduct is a valid
4 defense of the indictment separate and
5 distinct from entrapment.

6 THE COURT:

I will refuse that. I have
7 considered that before too and I think
8 I expressed --

9 MR. COSTA:

This is for the record, your
10 Honor.

11 THE COURT:

I understand.

12 MR. COSTA:

I understand.

13 THE COURT:

You must put these exceptions
14 on the record.

15 MR. COSTA:

I know.

16 THE COURT:

Now, in refusing it, as I indicated
17 earlier that I would, it's really also
18 my firm conclusion that finding a
19 Defendant not guilty because of police
20 misconduct is not a function of the
21 jury nor a matter that it should be
22 concerned with but is something that
23 in appropriate circumstances would
24 provoke the Court to instruct the jury
25 to acquit or usually it's been invoked

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 think he would. I don't think --
2 THE COURT: You talked with him at five-fifteen
3 approximately, at that time he was set
4 to leave his home which is in Depew?
5 MR. COSTA: Right.
6 THE COURT: He should be here momentarily.
7 MR. COSTA: I would think so.
8
9 (Defendant present, 6:06 p.m.)
10
11 (Jury present.)
12
13 THE COURT: Who is speaking for the jury?
14 FOREMAN: I am, your Honor.
15 THE COURT: All right. Mr. McCabe, I have a
16 note, I read it into the transcript,
17 I will read it again, I read it into
18 the record rather, it says, "Transcripts
19 of testimony between Jones, Petronella
20 on 2-25-77 requested". There is some
21 confusion in my mind because Jones, of
22 course, gave testimony here in the trial,
23 Petronella gave testimony here in the
24 trial about the events on the 25th.
25 In due course the Stenographer in the

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 court room would generate a transcript
2 of that and, of course, there is no
3 transcript in being. Of course, the
4 only transcript we have are the trans-
5 cripts you held in your hand while you
6 were listening to the respective tape
7 recordings. I am not sure whether you
8 want the transcript of the tape record-
9 ing which relates to the 25th or
10 whether you want the testimony read
11 back that Mr. Jones gave and Mr.
12 Petronella gave concerning what happened
13 on the 25th.

14 FOREMAN:

We would like to go over the
transcript of the tape that we viewed
earlier.

17 THE COURT:

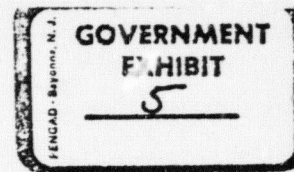
18 All right. Now, the tape recording
19 itself then, as I indicated to you,
20 is the evidence and the transcript
21 is sort of a program and so what we
22 will do is we will set up the machinery
23 for a replaying to you of the tape of
24 February 25, 1977 and again place in
25 you hands the transcripts with the same
admonition I gave you before --

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

219

Government Exhibits Nos. 5 and 6, Transcripts
of taped conversations - February 25th and 28th
1977.



Joseph Petronella: I'm at Ray's Collision. The date is 2-25-1977. I'm waiting for the owner to come out. I'm now entering Ray's Collision Shop.

Petronella: What's happening?

Ray Jones: Nothin much. (Unintelligible)

Petronella: I know, I mean I don't dig comin in with'em. That's why.

Jones: Ok, have a seat. Whadda ya got here?

Petronella: I got ah stamps.

Jones: Uh how many?

Petronella: A thou.

Jones: I can't handle a thousand.

Petronella: What could you handle? I'm looking for a third.

Jones: Well he's talkin' fifty cents ...

Petronella: Well.

Jones: Cents on the dollar.

Petronella: A third is a little better for you.

Jones: Huh?

Petronella: A third is cheaper.

Jones: Well what are we gonna do?

Petronella: Three and a quarter for a thou.

Jones: Three and a quarter for a thou? I can't ... damn, I can't get rid, I can't get rid of that many.

Petronella: No?

Jones: Unless I talk to him.

Petronella: Three hundred?

Jones: I can handle ... ah ... I can handle half of'em for ya.

Petronella: Gimme three hundred.

Jones: I can't, I a'in't got three hundred first of all.

Petronella: Alright.

Jones: And I can't get rid of'em. I did all the checking I could get.

Petronella: Alright, five hundred for a hundred and a half.

Jones: Five hundred for a hundred and a half? Deal. Fifty-dollar books?

Petronella: Forty.

Jones: Forty-dollar books.

Petronella: That's four hundred, four eighty, seven, fourteen, sixteen, eighteen, twenty. That's five hundred.

Jones: A hundred and fifty bucks. Good deal.

Petronella: I don't dig you being here with a gun and me with nothin. Ah ... well I'll have'em for the weekend if you want me to stop back or ...

Jones: Check with me, alright?

Petronella: When?

Jones: I'll be here tomorrow.

Petronella: Alright, what time?

Jones: Around noon.

Petronella: Ok. How about later than that, or no?

Jones: No, I close, I close around three, Ok.

Petronella: Alright if I come anytime between ... ah ... twelve and three?

Jones: Ten and three.

Petronella: Ten and three tomorrow? Ok. That's a hundred and fifty. Ok Ray.

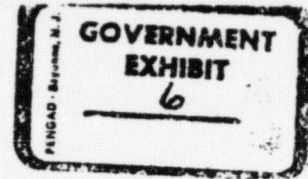
Jones: Ok, thank you.

Petronella: Just ask for you Ray?

Jones: Right.

Petronella: Ok.

Petronella: Just left the defendant (unintelligible) light skinned male, white shirt on, blue jeans, short hair. Gave me a hundred and fifty dollars cash for five hundred dollars worth of stamps. End of deal. The time of the deal was completed at 3:15.



Petronella: Time approximately 4:15 p.m. I'm in front of Ray Jones' Collision Service Incorporated. The address is 1736 North Fillmore. *no date*

Petronella: How ya doin. I got'em in the trunk. I don't wanna come in for'em.

Jones: Can't do that out here.

Petronella: Oh, I don't care, it's just me ...

Jones: Damn.

Petronella: They're only four here. Ray? I only brought the two of'em. Well that's what you wanted. What did you want?

Jones: Wanted all of'em.

Petronella: Oh, ha!

Jones: I wan'ta sell the whole grand for you.

Petronella: Yea, but who knew?

Jones: Huh?

Petronella: How much you got?

Jones: I'd a sold the whole grand for you.

Petronella: I'll have to ... ah ... come back. How long will you be here?

Jones: Be here another fifteen twenty minutes. Can you make it back by then? Can ya? Alright what've we got here sixty bucks?

Petronella: Sixty-five dollars worth.

Jones: Sixty-five dollars worth. Alright there's sixty ... and there's five.

22.4

Petronella: Alright how much money ya got there? What is it you want?

Jones: Huh?

Petronella: Tell me how much ... how much more do ya want?

Jones: Well, what do you. Gimme another eight hundred dollars worth. Eight hundred dollars would be what?

Petronella: Two sixty?

Jones: Two fifty. I gave ya sixty-five so that would be a hundred eighty-five dollars more. Right? You owe me eight hundred dollars more.

Petronella: Alright.

Jones: Ok.

Petronella: Ok Ray.

Petronella: Just completed a deal from Ray the owner of the shop, light skinned black male, white shirt on, with the name "Ray" in the corner, blue pants, brown shoes, deal is completed and shut off the radio.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA

Plaintiff-Appellee,

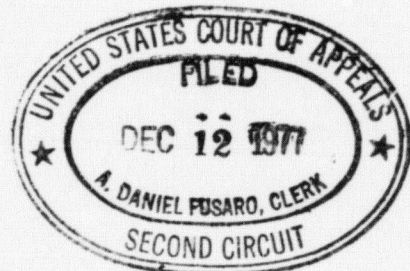
vs.

RAY JONES,

Defendant-Appellant

AFFIDAVIT OF
SERVICE BY MAIL

77-1424



STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

, being duly sworn, deposes and
says:

That deponent is not a party to this action and is over 18 years
of age; that on the 29th day of November, 1977, deponent
served 3 copies of Brief for Appellant and Appendix for Appellant
upon,

Richard J. Arcara, Esq.
United States Attorney
U. S. Court House
Buffalo, New York 14202

at the above address by depositing a true copy or copies of same enclosed
in a post-paid properly addressed wrapper, in an official depository under
the exclusive care and custody of the United States Post Office Department
within the State of New York.

Sworn to before me this
29th day of November
1977.

Steven J. Koczynski

Rosemary O'Halloran
Commissioner of Deeds
Buffalo, New York

My Commission Expires Dec. 31, 1978

